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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204070
Party	Defendant Tammy L. Goldthorpe fka Tammy Price
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

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Brody Chemical Company,	)	
Inc.,	)	Deposition of:
	)	
Opposer,	)	<u>BUZZ BUTLER</u>
	)	
vs.	)	
	)	
Goldthorpe, Tammy L. aka	)	Opposition No.
Tammy Price,	)	91/204,070
	)	
Applicant.	)	

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**May 20, 2013 \* 9:00 a.m.**

Location: CitiCourt  
236 South 300 East  
Salt Lake City, Utah

Reporter: Ashley Money, RPR  
Notary Public in and for the State of Utah

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P R O C E E D I N G S

BUZZ BUTLER,

called as a witness, being first duly sworn,  
was examined and testified as follows:

EXAMINATION

BY MR. WINESETT:

Q. Morning, Mr. Butler.

A. Good morning.

Q. I'm Nathan Winesett. I represent the  
applicant, Tammy Goldthorpe. I'll be deposing you  
today. David Bray, to your left, represents the  
opposer, Brody Chemical.

And you're not represented today; is that  
correct?

A. That's correct.

Q. You realize you're under oath?

A. I do.

Q. I'm going to ask you a question, and the  
court reporter will transcribe it; so only one person  
can talk at a time. And use verbal responses, of  
course, so she can record it. If you don't  
understand anything I say, just ask me to repeat it,  
and I'll be glad to do so.

1 Are you ready to begin?

2 A. I am.

3 Q. Can you please state your name and address  
4 for the record?

5 A. Yeah. My real name is Gregory Vaughn  
6 Butler. Address is 8116 Alamosa Circle, Bozeman,  
7 Montana, 59718.

8 Q. And what is your educational background?

9 A. Two years of college, no degree.

10 Q. Okay. Can you please tell me how you  
11 prepared for this deposition?

12 A. I read roughly through the -- you know,  
13 the different paperwork as far as the -- yeah, they  
14 call them things that are going to be presented as  
15 far as the documentations and things to review and  
16 just a basic question line that you sent, kind of a  
17 format of what was going to be asked so I was  
18 comfortable.

19 Q. Okay. And what is your current  
20 occupation?

21 A. Actually, self-owned, owner of a company  
22 called Advanced Technology Products.

23 Q. What do you do there?

24 A. I'm the owner. We sell -- we actually are  
25 distributors for different products, different

1 chemical lines.

2 Q. What kind of -- any asphalt release agents  
3 or --

4 A. Yes. We try to carry a full line of  
5 everything.

6 Q. Are you no longer associated with Brody  
7 Chemical?

8 A. Not an employment status. You know, we  
9 still have a relationship where I actually did a pool  
10 seminar for one of their employees on Monday and  
11 Tuesday, but there's no financial gain for me to do  
12 that. It's more as a -- you know, just went off on  
13 good terms.

14 Q. Did you say an employee seminar?

15 A. No. It's one of their employees. One of  
16 their employees is a certified pool operator. I'm an  
17 instructor for pool. So a lot of Brody employees  
18 have quite a network of pool operators that need to  
19 be certified every five years for national  
20 certification, so I do that as a favor to them.

21 Q. And how long was that?

22 A. That was Monday and Tuesday of last week.

23 Q. Did you talk with anybody from Brody  
24 Chemical regarding your deposition today?

25 A. No, not at all.

1 Q. So currently you're no longer employed at  
2 Brody Chemical?

3 A. Right.

4 Q. When did you leave?

5 A. March 10th of this year.

6 Q. Why did you leave?

7 A. A lot of different meeting and  
8 circumstances. Bottom line is I have ten years left  
9 before I want to retire, and I just feel that, you  
10 know, like I told Jon when I left, "Buzz needs Buzz  
11 in the next ten years more than Brody needs Buzz."  
12 So I elected to go off on my own and start my own  
13 business and try to benefit my future.

14 Q. Okay. Did -- you testified on -- in  
15 January of this year for Brody Chemical; is that  
16 correct?

17 A. Not for anybody. I mean, I testified -- I  
18 tell it like it is. I tell the truth. I mean, I was  
19 employed by Brody at the time, but any questions that  
20 were asked of me by you or Counselor -- David, I  
21 would have answered the same way. So I'm really not  
22 here representing anybody, and I wasn't at that time.  
23 I was just trying to tell the truths of the facts as  
24 I know them.

25 Q. Okay. So you consider yourself a neutral

1 party?

2 A. Yes, I do.

3 Q. Okay. Can you please describe your  
4 relationship with Tammy Goldthorpe, formerly known as  
5 Tammy Price?

6 A. I still know her as Tammy Price.  
7 Goldthorpe is hard for me to remember. But yes, she  
8 was an employee of ours. I have a business  
9 relationship with all of my sales reps, strictly  
10 professional business; but Tammy was also a friend.  
11 All my reps, I have a lot of respect for them and  
12 become friends after working so many years with them.  
13 So Tammy was a friend, but also a good employee of  
14 ours.

15 Q. All right. Do you have any incentives or  
16 deals with either party at this point?

17 A. No. I do not.

18 Q. When did you learn that you would be  
19 testifying for Brody Chemical in January?

20 A. Kind of a last minute thing. I was --  
21 actually, the week before the deposition, I got an  
22 e-mail from David Bray and -- asking me to come in  
23 and do a -- you know, a -- what I knew about this  
24 case.

25 In fact, I hadn't heard anything from



1 anybody until the day before when I was at a  
2 seminar -- an industrial seminar to come out at a  
3 certain time. So I -- kind of just an e-mail thing.  
4 I never talked -- Jon never talked to me about it.  
5 Nobody ever talked to me about it.

6 Q. Did you not speak with David Bray  
7 before -- at any time before your deposition?

8 A. Just before the deposition. We just sat  
9 in a general conversation.

10 MR. BRAY: We're going to take the  
11 position that while you were employed as a manager of  
12 Brody Chemical, there was an attorney/client  
13 privilege with regard to our discussions regarding  
14 the last deposition. I don't know if Nathan takes  
15 issue with that, but that's the position we're  
16 asserting.

17 MR. WINESETT: And that privilege is  
18 asserted as to content?

19 MR. BRAY: Yes.

20 MR. WINESETT: Okay. So he --

21 MR. BRAY: The fact of the meeting I don't  
22 care about or how long we met or that sort of thing.

23 MR. WINESETT: Okay.

24 Q. (BY MR. WINESETT) How did you prepare for  
25 that testimony?

1           A.       I didn't. I just showed up and answered  
2 the questions that were asked. I didn't do any  
3 preparation at all.

4           Q.       And looking through my questions, I want  
5 to make sure I respect any privileges asserted.

6                    Okay. Were you asked very narrow,  
7 specific questions in that testimony as to the  
8 employment status of Tammy Goldthorpe?

9           A.       I don't know what you mean by "narrow." I  
10 was -- answered the questions I was asked. They were  
11 in a certain direction, I'm sure, that Counsel want  
12 to take them, but I just answered the ones that I was  
13 asked. I don't know what you mean by "narrow."

14          Q.       Were you sent a transcript of your  
15 deposition and given an opportunity to review it and  
16 make corrections to your testimony?

17          A.       I was.

18          Q.       You testified that you were the national  
19 sales manager for Brody. Is that true?

20          A.       That's true.

21          Q.       Starting when?

22          A.       Off and on, I was the national sales  
23 manager for the first five years of the company's  
24 existence in '91 through '96 or '97, and then I came  
25 back in 2006 and was a national manager up until I

1 terminated my employment on March 10th of this year.  
2 Would have been January of 2006 when I came back.

3 Q. Who was national sales manager before you  
4 in -- in the years preceding 2006?

5 A. That would have been Matt Forsgren.

6 Q. Where were you during that time?

7 A. I was actually manager over the northern  
8 division up in Montana, so I oversaw about four  
9 northwestern states and built business in Northern  
10 Territories and also did my own sales.

11 Q. Okay.

12 MR. WINESETT: David, I'm referring to  
13 page 6, line 10 from Mr. Butler's testimony.

14 Q. (BY MR. WINESETT) And you testified that  
15 you were a little bit more of just a national sales  
16 manager. You were involved as far as payroll company  
17 profits, all the decisions made as far as how to pay  
18 who, what, where company wide, and that you usually  
19 set the payments regarding arrangements for Brody  
20 employees.

21 Was -- were you referring to the period of  
22 time after 2006?

23 A. Yeah. Yeah. When I came back as a  
24 national manager, I was -- that was my roles.

25 Q. You did not have that role in 2003, 2004,

1 2005?

2 A. No, thank goodness. I was in heaven in  
3 Montana.

4 Q. Who had that role in -- during those  
5 years?

6 A. I don't know who split up what part of  
7 that between Jon and Matt because I wasn't involved  
8 in the management part of it down there in the office  
9 at that time.

10 A little bit more about what I stated,  
11 too, on that, I was in charge of really the payroll  
12 for salespeople. I didn't have any involvement as  
13 far as internal, you know, salary people in the  
14 office and things like that. It was all salespeople  
15 related to outside sales.

16 So as far as the other thing, Jon was  
17 semiretired at the time, so I did get involved -- I  
18 get involved in the everyday payroll and pay  
19 structure. As far as what went where with the  
20 company, that was still Jon; but I did help out in  
21 some other aspects with the internal affairs of the  
22 company.

23 But no, I have no idea how they split that  
24 role before I got back.

25 Q. Do you know who was the national sales

1 manager in 2003, 2004, 2005?

2 A. Yeah. Matt Forsgren was.

3 Q. What involvement did you have with Salt  
4 Lake City matters in 2004, 2005, 2006?

5 A. Very little. Very little. I didn't do  
6 anything as far as those matters. I have enough up  
7 north, and I tried to stay away from that.

8 Q. Do you still generally have knowledge  
9 about Brody Chemical's relationship with  
10 Mrs. Goldthorpe or the Slippery Wizard product before  
11 2006?

12 A. No, not a lot. Vaguely I knew of her and  
13 I knew of the product from the sales meetings, what  
14 was brought in; but I was not part of when she first  
15 brought that in to Brody Chemical.

16 Q. Okay.

17 MR. WINESETT: Mr. Bray, I'm referring to  
18 page 5 and 6, line 19, of Mr. Butler's testimony.

19 Q. (BY MR. WINESETT) You testified as to  
20 Mrs. Goldthorpe's override, stating, "When I first  
21 came back, she was paid a dollar a gallon as far as  
22 override on products sold on a product."

23 Question, "So that would be products also  
24 sold by the other sales representatives?"

25 Answer, "Yes. That was on that one

1 particular product because she was going to go out  
2 and help other people sell that product."

3 Question, "And did she do that?"

4 Answer, "Sometimes."

5 What did you mean by "sometimes"?

6 A. "Sometimes," I meant that Tammy worked  
7 really hard starting that program off for two years.  
8 And what I meant by "sometimes" is she would -- she  
9 was going out and still doing that, but not every  
10 day, every week, you know. She was doing it when  
11 there was a need. She pretty well laid all the  
12 groundwork is what I'm trying to say.

13 So she laid the groundwork and done most  
14 of the on-the-road work the first two years to the  
15 bigger customers and clients, so it wasn't near as  
16 demanding on her when I came back. So she was doing  
17 that sometimes. There were times she was just  
18 selling products for herself.

19 Q. And she was doing all this 2004, 2005?

20 A. As far as I know. As far as I've been  
21 told, yes.

22 Q. What was Mrs. Goldthorpe paid in  
23 connection with the Slippery Wizard sales?

24 A. She was paid a dollar per gallon of the  
25 product sold. Unless -- if she sold it, she didn't

1 get that dollar because she got the straight 50  
2 commission on her own sales. But all other sales  
3 pertaining to Slippery Wizard, she got that dollar a  
4 gallon.

5 Q. No matter who sold it?

6 A. No matter who sold it.

7 Q. No matter where it was sold?

8 A. No. Company wide.

9 Q. I want to ask you about the structure of  
10 Brody Chemical. Are you familiar with that?

11 A. Very much.

12 Q. Who's the owner of the company?

13 A. Jon Liddiard.

14 Q. Who is under him?

15 A. Brody Liddiard. He's the CEO.

16 Q. And then who's under him?

17 A. Really nobody. And after Brody, you have  
18 a series of managers in different areas. You have  
19 Brandy Liddiard. She's in the family trust. So it'd  
20 probably be Brandy Liddiard would be under Brody.

21 Q. Is she an area manager?

22 A. Yes. Denver.

23 Q. But you were the national sales manager?

24 A. Yeah. I was the national sales manager.

25 Q. Would that make you next -- did you manage

1 all the areas?

2 A. I oversaw all the areas, but I didn't  
3 micromanage Brandy. She's family and she does a  
4 great job, so I looked at Brandy as being more of an  
5 equal than actually me being over here or vice versa.

6 Q. Who were the area managers and what was  
7 their area?

8 A. Steven LaFoon is the area manager for  
9 Arizona. Brandy was the manager, like I said, at  
10 Denver. She also covered the eastern part of like  
11 Kansas, Nebraska, areas like that also, plant areas.  
12 That's about it. That's about the area managers.  
13 Myself -- you know, myself as a national manager.

14 Q. That was Montana?

15 A. Well, I was a northern manager before I  
16 came back down as the national manager. Matt, at  
17 that time, was the national manager, and I was the  
18 northern manager in Montana. We just kind of  
19 combined the two when I came back down.

20 Q. Was Tammy Goldthorpe an area manager?

21 A. No.

22 Q. Was she a national sales manager?

23 A. No.

24 Q. Was she a manager?

25 A. I don't know what you'd classify her as.



1 I mean, she has an override. She was a specialist on  
2 one product, but I didn't ever consider Tammy a  
3 manager. I figured she was a specialist. I never  
4 looked at her as a manager.

5 Q. She didn't have any particular area of  
6 sales represented that she managed?

7 A. No. No. She was on call to whoever  
8 needed her for that particular product.

9 Q. It was all in connection with her product?

10 A. Uh-huh (affirmative).

11 Q. And that's what her royalty was for?

12 A. Yeah.

13 Q. Were you involved in negotiating  
14 Mrs. Goldthorpe's royalty?

15 A. No.

16 MR. BRAY: Objection, form.

17 MR. WINESETT: Mr. Bray, I'm referring to  
18 page 7, line 1 of Mr. Butler's testimony.

19 Q. (BY MR. WINESETT) You testified that you  
20 were paid straight overrides on all products in the  
21 territory for about 12 years. What do you mean by  
22 "straight overrides"?

23 A. I made a percentage of total gross margin  
24 profits on an area, so it wasn't limited to one  
25 product. It was limited to profits for region on all

1 sales.

2 Q. All Brody Chemical products?

3 A. Right.

4 Q. Including Slippery Wizard?

5 A. Yes.

6 Q. And Slippery Wizard was sold by Brody  
7 Chemical?

8 A. Yes.

9 Q. Was Tammy Goldthorpe's royalty a straight  
10 override?

11 MR. BRAY: Objection, form.

12 Q. (BY MR. WINESETT) Was Tammy Goldthorpe's  
13 payment a straight override?

14 A. Yes.

15 Q. She was -- was she paid a percentage of  
16 total gross margin of profit?

17 A. No.

18 Q. How was she paid?

19 A. Just a set amount, \$1 per gallon, per  
20 volume.

21 Q. And you still consider that a straight  
22 override?

23 A. I've heard it called override and I've  
24 heard it called other things. I called it an  
25 override. I call it -- any time somebody gets a

1 royalty off of something, I -- or mine was a royalty  
2 or override, I just call them overrides or royalties.  
3 I don't really separate the two. It's a word to me.  
4 An override to me is just a word.

5 Q. Just a general term to refer to something  
6 that's not salary?

7 A. Right, exactly.

8 Q. Did Mrs. Goldthorpe ever claim to you that  
9 she wasn't the owner of the Slippery Wizard product?

10 A. No, she never claimed she wasn't.

11 Q. Okay. I'm placing in front of you a  
12 document marked Exhibit 4 that was introduced as part  
13 of Brody Chemical's testimony. Do you recognize this  
14 document?

15 A. Only when it was sent to me by you guys to  
16 review it, but I hadn't seen it before that. I was  
17 told about it by Tammy, but I never actually looked  
18 at it and seen it before.

19 Q. Do you have an agreement like this?

20 A. No, I don't.

21 Q. So you weren't involved in the negotiation  
22 of this agreement?

23 A. No, I was not. Let me retract that. This  
24 agreement in particular, no; but when they did the  
25 other agreement with the White Wizard, I was. But

1       this particular agreement, no.

2               Q.       Do you have any knowledge regarding the  
3       negotiation or consummation of this agreement?

4               A.       I know they agreed verbally. I heard  
5       them -- we'd all talked, and it was verbally agreed  
6       upon about her override. And I knew that she -- this  
7       was kind of a confirmation, how I was told, on what  
8       she had already been receiving as far as her override  
9       on that particular product, on Slippery Wizard.

10              And I think this was just more of a  
11       confirmation for Tammy at the time. That was between  
12       her and Jon. He kind of dealt with that. But I did  
13       hear the negotiations and the conversations, but I  
14       wasn't, you know, part of this -- actually typing  
15       this up.

16              Q.       Did Tammy Goldthorpe receive the dollar  
17       per gallon before 2006?

18              A.       As I understood it. I didn't see it, but  
19       I understood that she was from the time she brought  
20       it on.

21              Q.       In what year?

22              A.       I was told it was in 2004.

23              Q.       Are you aware of anyone else in the  
24       company that has an agreement like this?

25              A.       No, not like this.

1 Q. Is Mark Simmons an area manager?

2 A. He was and he's not. He was at the time.  
3 He was kind of brought on as kind of a split area  
4 manager. He and Steven LaFoon. Steven was more  
5 industrial. Mark was more institution and had some  
6 products he brought on, so he was kind of overseeing  
7 the laundries and restaurant.

8 He didn't grow it to Brody's satisfaction,  
9 so it was kind of -- he was kind of just taken out of  
10 management and put back into sales.

11 Q. Does he have a royalty agreement with  
12 Brody Chemical?

13 A. He does.

14 MR. BRAY: Objection, form.

15 Q. (BY MR. WINESETT) As national sales  
16 manager, are you aware of the agreements within the  
17 company?

18 MR. BRAY: Objection, form.

19 Q. (BY MR. WINESETT) You can still answer.

20 A. Yes.

21 Q. Did Mark Simmons have a royalty agreement?

22 A. Yes.

23 MR. BRAY: Objection, form.

24 Q. (BY MR. WINESETT) Was it titled a royalty  
25 agreement?

1 A. Yes.

2 Q. What was this royalty agreement for?

3 A. His formulations that he brought on to  
4 Brody Chemical for his laundries and wear wash,  
5 his -- I was -- actually found Mark Simmons and  
6 brought him on, so I did know his agreement very  
7 well.

8 Q. So was this -- was this a license?

9 A. It was a contract that his attorney  
10 presented to Brody Chemical for signature. I'm not  
11 an attorney. I don't know what's a license and  
12 what's a contract, so I don't know what the  
13 difference is.

14 I know there's a contract that he had  
15 signed that gives him a certain amount, \$0.50 per  
16 gallon royalty or override, whatever you call it on  
17 his formulations.

18 Q. Was he the only person that was paid per  
19 gallon for a product?

20 A. Besides Tammy, yes, that I know of.

21 Q. Does this -- does Mark Simmons own these  
22 products which he gets a royalty agreement for?

23 MR. BRAY: Objection, foundation.

24 A. I don't know how that's worded. I don't  
25 know what the agreement on his contract is. He

1 did -- they were his knowledge that he brought to  
2 Brody. I don't know how that's typed up or written  
3 up in the contract, though, who actually maintains  
4 ownership of them.

5 Q. Does he control the nature and quality of  
6 those products?

7 A. Yes, he does.

8 Q. If Mark Simmons leaves, can he take those  
9 products with him?

10 MR. BRAY: Objection, foundation.

11 A. I don't know. I don't know how that's  
12 worded.

13 Q. (BY MR. WINESETT) Does Mark Simmons  
14 receive that royalty nationwide no matter who sells  
15 those products?

16 MR. BRAY: Objection, foundation.

17 A. Yes.

18 Q. (BY MR. WINESETT) And how do you know  
19 this?

20 A. Because we -- I know that he's paid based  
21 off volume of all those products. They track it by  
22 his code. That's established through that product  
23 with a CA in front of it for his particular code, and  
24 it's just run basically off of volume each month.

25 Q. And is that similar to how Tammy's payment

1 is calculated?

2 A. I didn't calculate it, I didn't see it  
3 calculated; but I was under the assumption that  
4 that's how she was being paid, on volume.  
5 Absolutely.

6 Q. Do managers at Brody Chemical generally  
7 pay for their own travel?

8 A. No.

9 Q. They're reimbursed in full?

10 A. Right.

11 Q. Was Tammy Goldthorpe reimbursed in full?

12 A. Not that I know. I don't know what her  
13 arrangement was. I read something that said that she  
14 was responsible for half the -- her travel. And I  
15 did know that as a fact because I was trying to help  
16 her train people -- do other things with other  
17 salesmen. She was on the road to help pick up some  
18 of her expenditures so she could afford to go.

19 So I knew she was required to pick up some  
20 of the -- you know, at least half of her expenses.

21 Q. Can you please read term three of the  
22 Exhibit 4 agreement in front of you?

23 A. Yeah. It says, "Brody agrees to split all  
24 airfare charges incurred by Tammy for travel to and  
25 from locations, two, and train, assist other sales



1 reps in regard to the Slippery Wizard products."

2 Q. Does that seem unusual for an employee to  
3 pay for their own travel?

4 MR. BRAY: Objection, form, foundation.

5 A. Not for employee -- not for a salesperson.  
6 A salesman, they're responsible for their own because  
7 they get a commission; but as a manager that's on a  
8 salary, that would be -- that would not be standard.

9 Q. (BY MR. WINESETT) Can you please read  
10 term number two in Exhibit 4?

11 A. It says, "For each gallon of Slippery  
12 Wizard sold, not including her own sales, Tammy will  
13 receive an override of \$1 per gallon."

14 Q. According to that contract, is she  
15 required to train others to receive that dollar per  
16 gallon?

17 A. No.

18 Q. Does she get it as a matter of course?

19 A. Yes.

20 Q. Regardless of whether she trains --

21 A. It's a residual. I mean, it's all  
22 front-loaded. All the work comes upfront and the  
23 results usually come in the end because it's -- it's  
24 upfront, loaded with labor. So you get the result  
25 from your investment.

1 (EXHIBIT 6 WAS MARKED.)

2 Q. (BY MR. WINESETT) I'm placing in front of  
3 you a document marked Exhibit 6. Do you recognize  
4 this document?

5 A. I recognize it as being a pay stub.

6 Q. Is it a Brody Chemical pay stub?

7 A. Yes.

8 Q. Can you identify this document as a Brody  
9 Chemical pay stub to Tammy Price, aka Tammy  
10 Goldthorpe?

11 A. Yes.

12 Q. What is the date of this pay stub?

13 A. 5/31/2006. That's the pay period  
14 6/10/2005. That's the pay period that it was paid  
15 out for.

16 Q. So you said 2006. Can you look again --

17 A. Oh, 2005. Sorry. 2005.

18 Q. Is this prior to the date of the agreement  
19 in Exhibit 4?

20 A. Yes, it is.

21 Q. What was Mrs. Goldthorpe's gross pay for  
22 this period?

23 A. 392.65.

24 Q. Can you please read out loud the  
25 deductions and amounts taken out of this payment?

1           A.       Yeah. Social Security was taken out,  
2       24.35; Medicare was minus 5.69; and the Utah State  
3       income tax was \$1.65.

4           Q.       Can you please read out loud the  
5       adjustments and amounts added to this payment?

6           A.       Meals reimbursement was 179.30, mileage  
7       reimbursement was 912.80, and there's an "Other"  
8       payment for 1,515.25.

9           Q.       Do you know what the "Other" payment is  
10      for?

11          A.       I don't -- without an itemized statement,  
12      I don't know what the "Other" would represent.

13          Q.       Have you seen other pay stubs with this  
14      "Other" amount?

15          A.       I haven't seen mine with "Other" on my pay  
16      stubs. I don't see the salesman's pay stubs. I'm  
17      not in the -- in that department, so all I see is  
18      just commission statements that are, you know,  
19      computerized commission statements. So I can see  
20      what they made, what they didn't, but I don't  
21      actually see their pay stubs like this.

22          Q.       Can you please read out loud the sentence  
23      at the very bottom?

24          A.       "Your federal taxable wages this period  
25      are \$392.65."

1 Q. Does that mean no employment taxes were  
2 deducted from the \$1,515.25 of income?

3 A. That's correct.

4 Q. Would you consider that employment income?

5 MR. BRAY: Objection, form, foundation,  
6 calls for a legal conclusion.

7 A. I don't know what the "Other" means. You  
8 know, I don't know if they're reimbursement or if  
9 it's products or things like that. So without an  
10 itemized statement, I couldn't make that judgment  
11 what "Other" means on that.

12 Q. But as national sales manager, are  
13 salaried employees normally have their employment  
14 taxes deducted from their salary?

15 A. Oh, absolutely.

16 Q. But not in this case?

17 A. Not in this case, not for that particular  
18 item.

19 Q. Was it your understanding that  
20 Mrs. Goldthorpe was the owner of the Slippery Wizard  
21 product?

22 A. I don't --

23 MR. BRAY: Objection, form.

24 A. I don't know about owner. I don't know  
25 what the contract -- Tammy Price or Tammy Goldthorpe

1 always told me that she had a contract with that and  
2 she brought it. And I know the history, kind of  
3 where she came from and stuff, so I assume, without  
4 seeing documentation, that she had the knowledge of  
5 that formula.

6 Q. (BY MR. WINESETT) Was it your  
7 understanding that her overrides were royalties or  
8 akin to royalties to sell the Slippery Wizard  
9 product?

10 MR. BRAY: Objection, form.

11 A. Yeah, I was.

12 Q. (BY MR. WINESETT) Was she paid this  
13 amount on Slippery Wizard from the moment she started  
14 working for Brody Chemical in 2004?

15 MR. BRAY: Objection, form, foundation.

16 A. Don't know that for a fact. I know she  
17 was from 2006 from the time I came to Salt Lake, but  
18 I don't know the history from 2004 to 2006. Only  
19 hearsay.

20 Q. Can you tell me about Jon Liddiard?

21 MR. BRAY: Objection, form.

22 Q. (BY MR. WINESETT) Is he an experienced  
23 businessman?

24 A. He's a businessman, yeah, he is.

25 Q. How long has he been in business?

1           A.     Oh, since -- well, since he got out of  
2 college, so a lot of years. He's probably -- since,  
3 I would guess, 1981. I don't know. A long time.

4           Q.     Has he been involved in lots of various  
5 business deals?

6           A.     Sure. Sure.

7           Q.     Are you aware of any instances where Jon  
8 Liddiard stole or misappropriated from someone else?

9                   MR. BRAY: Objection, form, foundation.

10          A.     That makes a judgment from my -- I'm  
11 uncomfortable with right now. As far as stole is a  
12 harsh word. As far as -- I don't know what  
13 classifies as, you know, conscience or forgetfulness  
14 or -- I know that's a very broad thing I'm not  
15 comfortable in answering really.

16          Q.     (BY MR. WINESETT) Are you aware of any  
17 issues with ZEP?

18          A.     Yes, I am.

19          Q.     What happened there?

20                   MR. BRAY: Objection, form.

21                   Go ahead. I'm just making a record. It's  
22 kind of an interesting deal with a trademark war. We  
23 don't have a trial; we just have trial depositions.  
24 So I've got to interrupt and make various  
25 instructions.

1                   THE WITNESS: I keep waiting for the judge  
2 to rule.

3                   But no, the ZEP was a noncompete battle,  
4 whether they were under a contractual agreement not  
5 to work for a competitor with the salesmen in  
6 Arizona. So we were battling their noncompete  
7 contracts to come to work for Brody Chemical.

8               Q.       (BY MR. WINESETT) How did that turn out?

9               A.       Good and bad. It was an expensive  
10 venture, but we did prevail that the contract did not  
11 hold up as noncompetes. So they are still working  
12 for Brody Chemical. It was an expensive venture,  
13 but -- we won the war, but we lost the battles is a  
14 good way to put it.

15              Q.       Was there any ruling in that case?

16              A.       No. There was actually a settlement, so I  
17 don't know if it would have got to a ruling.

18              Q.       Has Brody Chemical had any run-ins with  
19 the IRS?

20              A.       Yes.

21              Q.       What happened there?

22              A.       Nothing yet. They're still running -- I'm  
23 not really on the inside when it comes to that part  
24 of the business. I stay out of the IRS and the  
25 actual financial reigns. That's really between Jon

1 and Brody himself. I know of talk of what's taking  
2 place, but I'm not involved in it.

3 So I do know that there was a judgment  
4 against the company with the IRS, so they're -- now  
5 made a settlement and making payments towards that  
6 agreement.

7 Q. Do you know what the issue was?

8 A. I don't know. There were several issues.  
9 There's several issues as far as that amount of  
10 different things that were taking place in the  
11 company, so I don't know specifically what they were  
12 found to have to pay back.

13 Q. Are you aware of instances where Jon  
14 Liddiard has inflated cost to misappropriate money  
15 due to sales reps?

16 MR. BRAY: Object to form and also to  
17 relevance.

18 A. No. I know where you're going with it. I  
19 know that there was a concern at the time on the cost  
20 of the Slippery Wizard. We were being squeeze [sic]  
21 and priced out of the market on that particular  
22 product because the raw materials were taking a big  
23 hit, being that bio fuel was kind of getting popular.

24 So that particular oil got very popular in  
25 the industry, and our cost went up, you know,



1       amazingly a lot. So I know there was negotiation  
2       with Tammy, trying to lower the override so we could  
3       be more competitive in the market with that product  
4       at that time. So there was an issue there.

5               Q.       Did --

6               A.       I think it's for a different reason, you  
7       know. I see what you're saying.

8               Q.       Did Tammy Goldthorpe voluntarily lower her  
9       payment to accommodate the price of the product?

10              A.       She did, but it wasn't for the price of  
11       the product. Tammy -- at the time, we had a product  
12       come on called White Wizard, and she was threatened  
13       by White Wizard. Jon was actually coming up with  
14       another product, White Wizard, that might take over  
15       some of the Slippery Wizard sales.

16                      And me and Tammy had some very lengthy  
17       discussions about what I thought she should do,  
18       because if White Wizard turned out to be a real  
19       player in the industry, her whole override was in  
20       jeopardy as far as the Slippery Wizard wasn't needed  
21       any longer because the cost was so high.

22                      So she made a decision to take a little  
23       override on the White Wizard and lower the one on the  
24       Slippery Wizard at that time to make sure that  
25       whatever happened in the marketplace, she was still

1 going to get an override.

2 Q. Was she paid for this override for all  
3 Wizard products?

4 A. I don't know about the Clear Wizard. I  
5 know the White Wizard and the Slippery was; but the  
6 Clear Wizard, I don't know on that one at all.

7 Q. Did --

8 A. We didn't sell any of it. We didn't sell  
9 enough of it to really -- for her to even bring it  
10 up.

11 (EXHIBIT 7 WAS MARKED.)

12 Q. (BY MR. WINESETT) I'm placing in front of  
13 you a document marked Exhibit 7. Do you recognize  
14 this document?

15 A. Just a -- looks like it's an e-mail  
16 between Collette and Jon and Richard Wagner about her  
17 override.

18 Q. Are you included in the correspondence?

19 A. I'm looking to see if I was or not. Yes,  
20 I was.

21 Q. Were you -- so you were aware of this  
22 e-mail?

23 A. Yes, I was. This is what we just talked  
24 about where she was worried about the White Wizard  
25 taking over the Slippery Wizard program. So we

1 tended to get into a lot of lengthy talks about what  
2 would be best for her and her position.

3 Q. Does this e-mail refer to the decrease in  
4 her override from a dollar per gallon to \$0.50 per  
5 gallon?

6 A. Yes, it does.

7 Q. Does it say why Tammy agreed to lower her  
8 override?

9 A. Keep the cost the same. Yes, it does. It  
10 says, "Tammy is going to drop \$0.50 from the dollar  
11 of her override to keep the cost the same," because  
12 we were worried about the cost getting too high to  
13 the salespeople to be competitive in the market to  
14 sell the product.

15 Q. Do you think it is unusual for someone  
16 considered to be just an employee to voluntarily  
17 lower their payment to help out with the cost of a  
18 product?

19 MR. BRAY: Objection, form.

20 A. I don't think in this case it is, because  
21 it's -- a little bit of a lot, in my opinion, is a  
22 lot better than nothing of -- you know, a little bit  
23 of something is a lot better than a lot of nothing.  
24 And I think that was the decision she made, being in  
25 charge, actually, of this product and program, to

1       guarantee that she was going to make something and  
2       make it possible for that product to still sell and  
3       be competitive on the market.

4           Q.       (BY MR. WINESETT) Does this e-mail also  
5       state that Mrs. Goldthorpe would also be paid for  
6       every White Wizard sale?

7           A.       Yes, it does.

8           Q.       Do you know if this was nationwide?

9           A.       Yes, it should have been. I don't know if  
10      it was, but it should have been, yes.

11          Q.       Did she help train people with regard to  
12      White Wizard?

13          A.       As far as I know, yes. When she was in  
14      the field, she talked about both products, because  
15      there was a choice between a more expensive, more  
16      effective product, Slippery Wizard, or a lesser cost  
17      product, White Wizard. So people that were more cost  
18      effective, she was pushing the White Wizard; people  
19      who were more result oriented, she would push the  
20      Slippery Wizard.

21          Q.       Okay. Tell me about Tammy Goldthorpe.  
22      Was she an experienced businesswoman?

23          A.       I don't think so. I don't think she was  
24      an experienced businesswoman. She was very smart,  
25      but she really didn't run a business when I knew her.

1 I knew she worked for other people, but I don't know  
2 as far as what you classify as a businesswoman. But  
3 I don't know of a business she had run from the time  
4 I knew Tammy.

5 Q. Did you consider her to be trusting?

6 A. Oh, yes, very much so.

7 Q. Did you consider her to be naive?

8 A. Smart. Tammy is smart. I think a lot of  
9 us are naive, take face value a lot of times. So I  
10 think everybody is naive when it comes to business.  
11 I know I am.

12 Q. Do you think Jon Liddiard took advantage  
13 of her?

14 MR. BRAY: Objection, form, foundation.

15 A. Not that I know of. Not that I know of as  
16 far as taking advantage. I don't know what's  
17 happened -- transpired since her leaving. And I  
18 didn't know about her contractual agreement with Jon  
19 prior to me getting to -- there in 2006. So as far  
20 as when I was there helping out with Brody Chemical,  
21 I think she was treated fairly.

22 Q. (BY MR. WINESETT) Do you remember any  
23 instances where Brody Chemical made any efforts to  
24 cut her out of her payments?

25 A. Lower the cost, yes. I mean, as far as

1     trying to lower the cost of the product so we could  
2     sell more of it, that's always a decision that  
3     business has to try to make so you can sell more of  
4     something. Yes. And she was definitely a big part  
5     of the cost.

6           Q.     Did you ever feel that Jon Liddiard was  
7     dishonest about quoting the cost of raws when  
8     calculating commissions and overrides?

9           MR. BRAY: Objection, form, foundation,  
10    relevance.

11          A.     I don't think dishonest. I think people  
12    have a misrepresentation or a misguided sense of what  
13    it costs to run a company; and I think when we talk  
14    about a bump on a product, I think salesmen look at  
15    that as being profit to the company and not as an  
16    essential part of overhead, payroll, warehouse space,  
17    and things like that.

18                So I think it depends a lot of times, not  
19    always, on which side of the fence you're on. One  
20    side is running business and the other side is  
21    taking -- you know, taking out of their pocket, where  
22    actually that money is used as a cost. There is a  
23    cost there.

24                So I can't say that I've ever witnessed  
25    that as far as, you know, gaining on that.

1           Q.       (BY MR. WINESETT) When calculating  
2 payments to employees or associates or managers, did  
3 Brody Chemical mix in overhead when it was reporting  
4 cost of raws?

5                   MR. BRAY: Objection, form, foundation.

6           A.       We had a set percentage. We ran -- Jon  
7 would run everything on a set percentage basis to  
8 where there was a 1.5 on certain items of blending.  
9 There was a markup above real raw cost, because then  
10 you still have packaging, labeling, and labor to fill  
11 that product into a container.

12                   So he would take a product and raw and put  
13 a percentage markup on it, and that was pretty  
14 standard basis with all the products. So I know some  
15 things it dings more than others because the cost  
16 starts high. And when you deal with percentage, it's  
17 actually a higher markup than a cost that's low.

18                   So that's really a general formula how he  
19 does it, though.

20           Q.       (BY MR. WINESETT) Does that seem concrete  
21 to you?

22                   MR. BRAY: Objection, form.

23           A.       I'm a mathematics major, and I don't --  
24 out of college that's what I do, and I don't like,  
25 you know, some things in percentages; but that's a

1 business choice, and he owns the business. So not  
2 all the way that Jon did some of those practices  
3 would be the way I did or other people do it; but  
4 that was his business, so that's how he did it.

5 Q. (BY MR. WINESETT) Do you think that gives  
6 Jon Liddiard some opportunity to doctor numbers?

7 MR. BRAY: Objection, form, foundation --

8 A. Anybody --

9 MR. BRAY: -- relevance.

10 A. Anybody that has sole possession of the  
11 raws and the information -- I didn't. I didn't have  
12 possession of cost of raws and things like that.  
13 That was all done strictly by the owner of the  
14 company. So sure, there was an opportunity there.

15 Q. (BY MR. WINESETT) Was there any way for  
16 sales reps or managers to audit Jon Liddiard's  
17 calculation of these figures?

18 A. No.

19 Q. But you're not -- are you aware of any  
20 specific instances of manipulation of financial  
21 numbers?

22 A. No, not manipulation, not that word. I  
23 know that we've had -- that they had to raise cost on  
24 certain items to show a profit, you know; but I don't  
25 know I would call it manipulation. I would call that



1 business practice, right or wrong, however he decided  
2 to do it.

3 Q. Are you aware of any efforts on Jon  
4 Liddiard's part to collude or act fraudulently with  
5 regard to this matter?

6 A. No. I -- like I say, that's a big word  
7 also. I know there was reasons to try to keep the  
8 cost low on a product so they could sell more of it  
9 and compete and so we would want to sell more of it.  
10 So I know the dollar a gallon is always a high number  
11 paid to Tammy, and I think it evolved -- there was  
12 realities there from the company and Jon that that  
13 was an awful high number to try to compete on the  
14 market.

15 So I know there was a time that he was  
16 talking to her all the time. They talked together,  
17 not as much through me. That was their program. I  
18 know that they were always talking, trying to get  
19 this number down so they could sell more product.

20 Q. I'm placing in front of you a document  
21 introduced during Brody Chemical's case in chief,  
22 marked Exhibit 1 and purported to be a sales  
23 representative agreement with Mrs. Goldthorpe. Can  
24 you please review that document?

25 A. Okay.

1           Q.     Do you have any personal knowledge with  
2 regard to this document?

3           A.     I've had salesmen sign literally hundreds  
4 of these.

5           Q.     Can you tell me what's noted in the footer  
6 on the very last page?

7           A.     Yeah. There's a date of 1/94 document --  
8 of the date of 1/94.

9           Q.     What does that mean to you?

10          A.     That was the original -- really the  
11 noncompete was the original document we called a  
12 noncompete or employee agreement that we established  
13 clear back in '94. Very first one they came out  
14 with.

15          Q.     Do the sales representative agreements  
16 that you give to sales reps have that footer on them?

17          A.     They do -- or no. Wait. Wait. I can't  
18 answer that because I never noticed or ever looked  
19 for that before. So the only way I noticed that  
20 before is it's on one of these that was sent to me  
21 when I terminated my employment. So that's where I  
22 saw it before, but I never really noticed that on a  
23 footer of a document before that came to me.

24          Q.     Does this appear to be the standard form  
25 used in 1994?

1           A.       It does.

2                   MR. BRAY:  Objection.

3           A.       I don't know verbatim, but it looks  
4 general outline, yes.

5           Q.       (BY MR. WINESETT)  That marking would  
6 indicate that to you?

7           A.       Yes.

8           Q.       Can you tell me if this document was  
9 signed anywhere by Brody Chemical?

10          A.       No.  None of her equipment was signed out  
11 either.  Back then when we signed out textbooks,  
12 labels, order pads, this whole document was based  
13 on -- whatever they agreed that they checked off at  
14 the time, they would return to the company at the  
15 time of -- you know, of them leaving the company.

16                   So our protection was that page there  
17 listing what we actually gave them as far as sales  
18 tools.  And it was not signed by any manager or  
19 dated.

20          Q.       Can you please look at the name and  
21 address and phone number on page 1?  Do you know if  
22 this was Mrs. Goldthorpe's address and phone in 2004?

23          A.       I would have no way of knowing that.

24          Q.       Do the sales representative agreements  
25 that you pass on to some of your representatives, do

1 they have a space asking for the date of birth on  
2 them in this front page?

3 A. On their date of birth? Not that I've  
4 ever noticed, no.

5 Q. Is there a date of birth on -- request on  
6 this form?

7 A. I'm looking for that, and I really can't  
8 see a date of birth on here. Don't see one.

9 Q. Do you know whether Tammy Goldthorpe was  
10 previously employed by Brody Chemical?

11 A. Yes.

12 Q. Back in the late '90s?

13 A. She was.

14 Q. Is this the -- is the form of the  
15 agreement that she would have been given at that  
16 time?

17 A. In the late '90s, yes.

18 Q. Thank you. Did you come up with the name  
19 Slippery Wizard?

20 A. No, I did not.

21 Q. Were you involved in any way with the  
22 creation or adoption of the name Slippery Wizard?

23 A. No, I was not.

24 Q. Do you have any knowledge of who created  
25 the mark Slippery Wizard?

1           A.       Don't know anything about the mark, but I  
2 know Tammy came up with the name. Don't know about  
3 what you mean by mark.

4           Q.       Was the Slippery Wizard formula developed  
5 by Mrs. Goldthorpe?

6           A.       Didn't see the formula. I know the  
7 history. I know where it came from and where she  
8 brought it from Brody, and I know the people that she  
9 came from actually had the product; so I'm assuming  
10 that yes, that she brought it to Brody Chemical.

11          Q.       Did she have the most knowledge at Brody  
12 Chemical about the composition and use of the  
13 product?

14          A.       Yes.

15          Q.       Does Jon Liddiard have a chemistry degree?

16          A.       Not to my knowledge.

17               MR. BRAY: Objection, form, foundation.

18          Q.       (BY MR. WINESETT) Did he develop the  
19 formula or create the mark?

20               MR. BRAY: Objection, form.

21          A.       Don't know what you mean by trademark. I  
22 don't know what happened on the trademark, but I know  
23 the formula was brought to him by Tammy -- the  
24 original formula. Let me restate. The original  
25 formula.

1           Q.       (BY MR. WINESETT) Were you involved in  
2 the recruitment of Mrs. Goldthorpe?

3           A.       Not to my recollection. I recruited  
4 hundreds of people. I don't remember -- in fact, I  
5 was trying to remember the first time I met Tammy,  
6 and I have a hard time. I remember talking to her on  
7 the phone in Salt Lake when she started working  
8 there, but I don't remember that. Don't remember  
9 hiring Tammy.

10          Q.       Were you involved in the recruitment of  
11 the Slippery Wizard formula?

12          A.       No. No.

13          Q.       Were you aware of Mrs. Goldthorpe's hiring  
14 or involvement with Brody Chemical?

15          A.       Not really, not until after she came on  
16 board and they introduced the product at one of the  
17 sales meetings.

18          Q.       What year was that?

19          A.       Boy, I can't remember the year on that.  
20 I'm getting old. It had to have been back in 2004  
21 time because I remember I was in Montana when I came  
22 down for the sales meeting when they introduced the  
23 product. So it was probably the year of 2004 or  
24 2005.

25          Q.       Was this product introduced in connection

1 with Tammy Goldthorpe?

2 A. Yes.

3 Q. And it was the Slippery Wizard product?

4 A. Yes.

5 Q. What do you know about her previous  
6 knowledge and experience with regards to asphalt  
7 release agents?

8 A. I know when she left Brody the first time,  
9 she went to work with a gentleman, a friend of  
10 mine -- our friend, an acquaintance of mine, Steve  
11 Madsen. And the two of them went to work with this  
12 formula with a company, ARA, I believe. They're out  
13 of California. I can't remember the initials. I  
14 think it's ARA.

15 And they actually represented that product  
16 with them for quite a while. I don't know what  
17 happened there, why there was a falling out with her  
18 and Steve and that company. I didn't get into that.  
19 But I know shortly after that she showed up at Brody  
20 with that formula or with that knowledge of a product  
21 and that's where it came from.

22 Q. When she became involved with Brody  
23 Chemical in 2004, did she have special knowledge and  
24 experience in connection with asphalt release agents?

25 A. She did from that history, yeah.

1 Q. Did she -- do you think employees and  
2 customers generally associated Mrs. Goldthorpe as a  
3 source of the Slippery Wizard product?

4 A. Yes.

5 MR. BRAY: Objection, form, foundation.

6 Q. (BY MR. WINESETT) Have you ever signed a  
7 contract with Brody Chemical?

8 A. No.

9 Q. Did Jon Liddiard ever claim that you have  
10 signed a contract with Brody Chemical?

11 A. Yes.

12 Q. Can you tell me what happened?

13 A. I'd just as soon not. I've got pending --  
14 something pending down the road -- possible pending  
15 litigation, so I'd just as soon not talk about my  
16 potential case at this time.

17 Q. And I respect that and will not ask any  
18 further questions about that.

19 A. Thank you.

20 (EXHIBIT 8 WAS MARKED.)

21 Q. (BY MR. WINESETT) I'm placing in front of  
22 you a document marked Exhibit 8. Do you recognize  
23 this?

24 A. I do.

25 Q. What is it?



1           A.       That's our industrial catalog we put  
2 together when I came back down from Montana in about  
3 2006-2007 area.

4           Q.       Were you involved in the creation of this  
5 document?

6           A.       I was.

7           Q.       Is this document given to customers?

8           A.       Yes, sir.

9           Q.       Sales reps?

10          A.       Yes.

11          Q.       Okay.

12                   MR. WINESETT: I have no further  
13 questions.

14                   MR. BRAY: I've just got a few follow-up  
15 questions, Buzz.

16                                   EXAMINATION

17                   BY MR. BRAY:

18           Q.       Take a look at Exhibit 6 in front of you,  
19 which is the payroll statement. When you were  
20 employed by Brody Chemical, did you receive earning  
21 statements from ADP that generally looked like this?

22           A.       Yes.

23           Q.       Did all employees of Brody Chemical  
24 receive earning statements from ADP that looked like  
25 Exhibit 6?

1 A. Yes.

2 Q. Is Exhibit 6 consistent or inconsistent  
3 with Ms. Goldthorpe being an employee of Brody in  
4 2005?

5 A. I would say yes on both ends, because I  
6 know she was commission and she was also doing some  
7 other things with the Slippery Wizard. So I would  
8 say yes.

9 Q. Okay. In response to some questions from  
10 Mr. Winesett, you were discussing a royalty versus an  
11 override; and you said something like you don't know  
12 the definitions of the word, but to you, an override  
13 is a general term for something that is not salary.  
14 Do you remember saying that?

15 A. Right.

16 Q. Okay. And you did earn override  
17 commission as a national sales manager?

18 A. Yes, I did.

19 Q. Were federal taxes withheld from the  
20 override commissions that you --

21 A. Yes, they were.

22 Q. Okay. You testified that Ms. Goldthorpe  
23 had knowledge of the original formula for Slippery  
24 Wizard?

25 A. Yes.

1           Q.     Okay. I think you also said you didn't  
2 have specific knowledge regarding the formula?

3           A.     I've never seen the formula.

4           Q.     Okay. Do you have an understanding, yes  
5 or no, as to whether the formulation of Slippery  
6 Wizard changed over time?

7           A.     I know that for a fact it has.

8           Q.     And was it changed as a result of the  
9 impetus of Jon Liddiard?

10          A.     Pardon me?

11          Q.     Was it changed as a result of Jon  
12 Liddiard's input, the formulation of the Slippery  
13 Wizard product?

14          A.     I think both Jon and Tammy both had input  
15 on the changes because of some circumstances with the  
16 oil we were getting and the quality.

17          Q.     You answered a question in response to  
18 Mr. Winesett where he asked you whether customers  
19 identify Tammy Goldthorpe as the source of the  
20 Slippery Wizard product. In its written materials,  
21 did Brody Chemical ever refer to the Slippery Wizard  
22 product as Tammy Goldthorpe's Slippery Wizard  
23 product?

24          A.     No.

25          Q.     Was it always referred to as the Brody

1 Chemical Slippery Wizard product?

2 A. Yes.

3 Q. Was Tammy Goldthorpe there for every sale  
4 that Brody made of the Slippery Wizard product?

5 A. No.

6 Q. Were the salesmen that were selling the  
7 Slippery Wizard product to customers told as part of  
8 their training that -- to alert customers -- well,  
9 strike that. Never mind.

10 And you said that one of the documents you  
11 reviewed to prepare for today's deposition was a list  
12 of questions?

13 A. Yes.

14 Q. Do you have that with you?

15 MR. BRAY: Can we go ahead and mark this?

16 **(EXHIBIT 9 WAS MARKED.)**

17 Q. (BY MR. WINESETT) I've handed you what's  
18 been marked Exhibit 9. Can you identify the  
19 document?

20 A. It's a list of questions that was sent to  
21 me to review for the deposition.

22 Q. Okay. And that was -- you received that  
23 from Mr. Winesett?

24 A. Yes.

25 Q. Did you have discussions with Mr. Winesett

1 regarding today's deposition?

2 A. No, I did not.

3 Q. Okay. He just sent you a list of  
4 questions --

5 A. Just a list of questions to refresh my  
6 memory to see what was going to be asked since -- so  
7 if there was some things I had to refresh my memory  
8 or look into it more. But just a list of questions.

9 Q. Are you familiar with the formula for the  
10 asphalt release agents that Advanced Technology  
11 Products sells?

12 A. Depending on the formula, it's just a  
13 buy-in product, yes.

14 Q. Okay. You mean it's a product that you  
15 buy from a third party?

16 A. Right. Right.

17 Q. And with regard to -- Mark Simmons is the  
18 gentleman in Phoenix, right?

19 A. Right.

20 Q. And you said that he had an agreement that  
21 was actually called a royalty agreement; is that  
22 right?

23 A. A contract, right.

24 Q. Okay. Have you seen the contract?

25 A. I have.

1 Q. Was it entitled "Royalty Agreement"?

2 A. I can't remember. That's what I was  
3 trying to remember. I can't remember what the title  
4 was, what they called it in the contract.

5 Q. No worries.

6 MR. BRAY: Buzz, I have nothing further.

7 FURTHER EXAMINATION

8 BY MR. WINESETT:

9 Q. Mr. Butler, can you please look at  
10 Exhibit 8? Are all the products sold in here Brody  
11 Chemical products?

12 A. Some are buy-in products, but they're all,  
13 you know, either retailed or manufactured by Brody,  
14 yes.

15 Q. Can you please turn to page 23? Is there  
16 a product on this page called Purple Power?

17 A. There is.

18 Q. Can you tell me about that product?

19 A. Yeah. It's not very good. It was an  
20 economical product that they were trying to compete  
21 with over in Denver, beetle based product. So we  
22 took a standard base product and cut it with what we  
23 would call profit, which is called water, and  
24 re-watered it down so it was a very lesser type of  
25 degreaser.

1 Q. Is this the buy-in product?

2 A. Not that I know of. That's one that's  
3 actually made by Brody Chemical.

4 Q. But it's labeled Purple Power.

5 A. Right. That's the name. They came up  
6 with it.

7 Q. Where did Brody Chemical get that name?

8 A. I have no idea. I think Brandy came up  
9 with the name, I believe, in Denver. That was one  
10 that showed up on the price list between Brandy and  
11 Jon that she made over in Denver.

12 Q. But Purple Power is the name that this  
13 product is marketed under?

14 A. Right. I tried to rename it Purple  
15 Powerless, but they didn't listen to me.

16 Q. Can you please turn to page 17? Is there  
17 a product on that page named Ice Beater?

18 A. There is.

19 Q. Can you tell me about that product?

20 A. Yeah. That's just an 8 percent or  
21 5 percent calcium blend of ice melt, standard sodium  
22 hypochlorite type product with a little calcium in  
23 it.

24 Q. Does Brody Chemical own that product?

25 A. They own it. They manufacture it. And

1 that's the name they came up with for that product.

2 Q. Is it a buy-in?

3 A. No. That's a manufactured product.

4 Q. And Ice Beater is the mark used in  
5 connection with this product?

6 A. It is.

7 Q. Does this product catalog include  
8 aerosols?

9 A. Yeah. They're scattered throughout the  
10 catalog.

11 Q. Are those buy-ins?

12 A. Yes, they are.

13 Q. Does this product catalog includes  
14 degreasers?

15 A. It does.

16 Q. Are those product -- are those products  
17 buy-ins?

18 A. No. Those are manufactures.

19 Q. Does this product catalog include hand  
20 cleaners?

21 A. Yes, it does.

22 Q. Are those products buy-ins?

23 A. Yes, they are.

24 Q. They're owned by somebody else?

25 A. Yes.



1 Q. Regarding Exhibit 9, have you ever spoken  
2 to me before this deposition?

3 A. I have not.

4 Q. Have you provided me with any information  
5 prior to this deposition?

6 A. No.

7 Q. Have I ever interviewed you?

8 A. No.

9 Q. Have I stated any reason for providing you  
10 with questions?

11 A. No.

12 Q. Did you get the questions through me?

13 A. No. I got those -- Tammy Price called me  
14 and said that she was feeling bad that I was going to  
15 be under the hot seat and under the light and she  
16 didn't want me to feel uncomfortable, so she was  
17 going to see if I could get some questions so I was a  
18 little bit more comfortable and refresh my memory on  
19 some things. And I appreciated that.

20 Q. Okay. At Advanced Tech, you said you sell  
21 asphalt release?

22 A. Uh-huh (affirmative).

23 Q. And that is a third-party product?

24 A. Right.

25 Q. Is this a new business?

1           A.       It is.

2           Q.       Do you have any brochures prepared yet?

3           A.       Not very professional, but -- no, not yet.  
4       Nothing I'm handing out yet. I'm still working on  
5       them. I'm not a real marketing guy. I've come to  
6       respect a little bit about Brody Chemical trying to  
7       put something together.

8                   MR. BRAY: You have your personal charm,  
9       though, Buzz.

10                  THE WITNESS: That's true. It's a work in  
11       progress.

12           Q.       (BY MR. WINESETT) Will these asphalt  
13       release products be in your brochure?

14           A.       Not these products, no. I will have  
15       asphalt release products, but not the same product.  
16       I will offer a product, yes.

17           Q.       And will you advertise that product in  
18       your brochure?

19           A.       Oh, absolutely.

20                   MR. WINESETT: Okay. I think that's it.

21                   THE WITNESS: Read and sign.

22                   (Deposition concluded at 10:10 a.m.)  
23  
24  
25



Case: Brody Chemical versus Goldthorpe  
 Opposition No.: 91/204,070  
 Reporter: Ashley Money  
 Date taken: May 20, 2013

**WITNESS CERTIFICATE**

I, **BUZZ BUTLER**, HEREBY DECLARE:  
 That I am the witness in the foregoing  
 transcript; that I have read the transcript and know  
 the contents thereof; that with these corrections I  
 have noted this transcript truly and accurately  
 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_ No corrections were made.

I, **BUZZ BUTLER**, HEREBY DECLARE UNDER THE  
 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES  
 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE  
 FOREGOING IS TRUE AND CORRECT.

\_\_\_\_\_  
**BUZZ BUTLER**

SUBSCRIBED and SWORN to this \_\_\_\_\_ day  
 of \_\_\_\_\_, 2013, at \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

CO. FILE DEPT. CLOCK NUMBER 049  
W3S 001126 310 0000004608 1

BRODY CHEMICAL  
4825 SOUTH 6200 WEST  
SALT LAKE CITY, UTAH 84118  
(801) 580-5136

Taxable Marital Status: Married  
Exemptions/Allowances:  
Federal: 3  
UT: 3

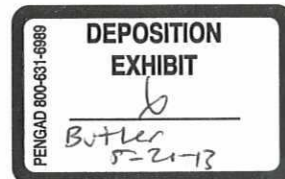
Social Security Number: XXX-XX-1758

## Earnings Statement



Period Ending: 05/31/2005  
Pay Date: 06/10/2005

TAMMY PRICE



Earnings	rate	hours	this period	year to date
Commission			392.65	7,430.94
<b>Gross Pay</b>			<b>\$392.65</b>	<b>7,430.94</b>
<b>Deductions</b>	<b>Statutory</b>			
	Social Security Tax		-24.35	460.72
	Medicare Tax		-5.69	107.75
	UT State Income Tax		-1.65	275.47
	Federal Income Tax			350.23
	<b>Other</b>			
	Meals			-2,270.14
	Mileage			-3,205.20
	Other			-9,093.72
	<b>Adjustment</b>			
	Meals		+179.30	
	Mileage		+912.80	
	Other		+1,515.25	
<b>Net Pay</b>			<b>\$2,968.31</b>	

Your federal taxable wages this period are \$392.65

**Subject:** Fw: Slippery Wizard  
**From:** collette@brodychemical.com (collette@brodychemical.com)  
**To:** tamme\_price@yahoo.com;  
**Date:** Wednesday, July 21, 2010 10:26 AM



----- Original Message -----

From: <collette@brodychemical.com>  
To: "Brody Liddiard Brody" <brody@brodychemical.com>  
Sent: Tuesday, July 20, 2010 3:07 PM  
Subject: Fw: Slippery Wizard

>  
> ----- Original Message -----  
> From: "Jon Liddiard" <jonliddiard@brodychemical.com>  
> To: "Richard Wagner" <richard@brodychemical.com>; "Tammy Price"  
> <tammy@brodychemical.com>; "Collette" <collette@brodychemical.com>; "Buzz  
> Butler" <Elkring@aol.com>  
> Sent: Thursday, March 13, 2008 3:06 PM  
> Subject: Slippery Wizard  
>  
>  
>> Tammy, Collette and Richard-  
>> 1- Will you (Richard) raise the cost of White Wizard by \$0.50 per  
>> gallon.  
>> 2- Leave the Slippery Wizard the same instead of the \$0.50 increase we  
>> need to cover the new cost of the Soy Oil increase (\$0.54 to \$0.80).  
>> Tammy is going to drop \$0.50 (from \$1.00) of her override to keep this  
>> cost the same.  
>> 3- Collette... will you change Tammy's override to \$0.50 per gallon on  
>> the Slippery Wizard and also give her \$0.50 per gallon override on the  
>> new White Wizard.  
>> Thank you,  
>> Jon  
>>  
>>  
>>  
>>  
>

## Buzz Butler Deposition Questions

### Question

### Answer

#### Introduce myself

#### Background

Please state your name and address.

Good morning Mr. Butler, can you please tell me your educational background?

Thank you. Can you please tell me how you prepared for this deposition?

What is your current occupation?

#### Circumstances of Leaving

Are no longer associated with Brody Chemical?

When did you leave?

Right after the deposition?

Why did you leave?

Tell me how you left, did you have an argument, send a letter, what?

#### Relationship with Applicant

Please describe you relationship with Mrs. Goldthorpe.

Are you being paid for your testimony?

Would you gain anything by testifying in favor of Mrs. Goldthorpe?

Do you have any incentives or deals with either party at this point?

When you testified for Brody Chemical, were you working there?

But now, are you a neutral party?

#### Butler Testimony for Opposer

You were called as a witness for Brody Chemical on January 30, 2013. Is that correct?

About when did you learn that you would be testifying for Brody Chemical?

Who talked to you about testifying?

Where was this?

How did you prepare for that testimony?

## Question

## Answer

Did you have an argument regarding this?

What was it about?

Did you feel pressured to lie?

What happened then?

Were you asked very narrow, specific questions in that testimony?

Were you sent the transcript of your deposition and given the opportunity to review it and make corrections to your testimony?

Is it okay if we clear up a few things then?

You testified that you were the national sales manager for Brody, is that true? Page 3, Line 18

Starting when?

Who was the national sales manager before that?

Where were you before that?

You testified that you were "a little bit more than just a national sales manager..." that you were "involved as far as payroll, company profits, all the decisions made as far as how to pay who, what, where, company wide." and that you "usually set the payments" regarding payment arrangements for Brody employees. Page 6, Line 10 What period of time was this applicable too? After 2006?

Before 2006, did you have such knowledge?

Who would have such knowledge?

How do you know that?

What involvement did you have with Salt Lake City matters before 2006?

Did you still have some knowledge about Brody Chemical's relationship with Mrs. Goldthorpe or the SLIPPERY WIZARD product before 2006? Please explain.

You testified as to Mrs. Goldthorpe's override stating: "When I first came back, she was paid a dollar a gallon as far as her override on products sold on a product." Question: "So that would be products also sold by other sales representatives?" Answer: "Yes. That was on that one particular product, because she was going to go out and help



## Question

## Answer

other people sell that product.” Question: “And did she do that?” Answer: “Sometimes.” What did you mean by “sometimes?” Page 5-6, Line 19.

Were you implying that the one dollar per gallon was for something more than assisting others with sales?

In your testimony, Page 6, Line 18, Question: “Did you set the payments with – well, strike that. Were you aware of the payment arrangements that Brody Chemical had with Ms. Goldthorpe?”

Answer: “Absolutely.” He originally was going to ask if you set the payments with Mrs. Goldthorpe. Did you set these payments?

Who did?

Were you involved in negotiating Mrs. Goldthorpe's override?

You also testified that you were “paid straight overrides on all products in the territory for about 12 years.” What do you mean by “straight” overrides? Page 7, Line 1.

You also testified that it was “our basic practice with most all of our managers as a motivation to help them grow and give them an extra payment for good work performed.” Were such managers also paid “straight overrides?”

Is that different than how Mrs. Goldthorpe was paid? How so?

Was Mrs. Goldthorpe a “manager” as claimed by Brody Chemical?

In your prior testimony, were you asked questions about whether Ms. Goldthorpe made specific statements to you about being the owner of SLIPPERY WIZARD, having a license, and being an independent contractor?

Were you ever asked directly about your actual understanding of these things?

I want to ask you these questions in reverse. Did she ever claim to you that she was a W-2 employee of Brody Chemical?

Did she ever claim to you that she did NOT own the SLIPPERY WIZARD mark and product?

Did she ever claim to you that she did NOT have a

## Question

## Answer

license?

Okay then. I'm placing in front of you a document introduced during Brody Chemical's case in chief and entered as EXHIBIT 4 [4-1-06 AGREEMENT]. Please review this document. Do you recognize this document?

What is it?

When did you first see this agreement?

Were you involved in the negotiation of this agreement?

Were you involved in the negotiation of any prior oral agreement relating to this agreement?

Do you have any knowledge regarding the negotiation or consummation of this agreement? Please explain.

As national sales manager, were you in charge of paying Ms. Goldthorpe in accordance with this agreement?

Did you have an agreement similar to this one with Brody Chemical?

Are you aware of anyone else that had an agreement similar to Exhibit 4?

Is this agreement with Mrs. Goldthorpe in Exhibit 4 unique?

Please read term #3. Do managers at Brody Chemical generally pay for their own travel?

Do you?

Does this indicate to you that Ms. Goldthorpe has an ownership interest in SLIPPERY WIZARD?

Please read term #2. Is Ms. Goldthorpe required to help others in order to get the \$1 per gallon?

Does she get the \$1 per gallon as a matter of course for every gallon sold by Brody Chemical, without any duty on her part?

Unless she sells it on her own. Is that correct?

I am placing in front of you a document marked EXHIBIT 6 [paystub]. Please review it. Do you recognize this document?

What is it?

## Question

## Answer

And even though this is prior to your appointment as national sales manager, are you still generally knowledgeable of and have access to the history and manner of Brody Chemical's financial matters?

Can you identify this document as a Brody Chemical paystub to Tammy Price aka Tammy Goldthorpe?

What is the date of this paystub?

Is this prior to the date of the agreement of Exhibit 4?

What was Ms. Goldthorpe's gross pay for this period?

Can you please read out loud the deductions and amounts taken out of this payment?

Can you please read out loud the adjustments and amounts added to this payment?

Do you know what the "Other" payment is for?

Even though it was prior to the 4/1/2006 agreement?

Do you know if there was there an oral agreement that preceded this 4/1/2006 agreement?

Can you please read out loud the sentence at the very bottom?

Does that mean the employment taxes were only deducted from \$392.65?

Does that mean that no employment taxes were deducted from the \$1,515.25 in income?

Would you say that Mrs. Goldthorpe is a W-2 employee or an independent contractor as to the \$1,515.25?

Okay then I'll ask you directly, what was your understanding of Mrs. Goldthorpe's ownership of the SLIPPERY WIZARD product?

Was it your understanding that this was a license, or akin to a license to sell her SLIPPERY WIZARD product?

Was it your understanding that her overrides were royalties, or akin to royalties to sell her SLIPPERY WIZARD product?

## **Question**

## **Answer**

Was she paid this override on SLIPPERY WIZARD from the moment she started working with Brody Chemical in 2004?

### **Sophistication of Parties**

Tell me about Jon Liddiard. Is he an experienced businessman?

Has he been involved in lots of various business deals and such?

Are you aware of any instances where Jon Liddiard stole or misappropriated from someone else?

Who was involved?

About when did this occur?

What happened in that case?

How did he misappropriate?

Tell me about Tammy Goldthorpe. Was she an experienced businesswoman?

Was she trusting?

Was she naive?

Did Jon Liddiard take advantage of her?

Did Brody Chemical make any efforts to cut her out of her payments?

What happened?

### **Alleged Sales Representative Agreement**

Are you aware of any efforts on Jon Liddiard's part to collude or act fraudulently with regard to this matter?

I'm placing in front of you a document introduced during Brody Chemical's case-in-chief and marked EXHIBIT 1 and purported to be a sales representative agreement with Mrs. Goldthorpe. Please review this document. What do you know about this document?

On the last page, what is noted in the footer?

Was this the standard form in 1994?

Was this the standard form in 2004?

Please take a minute to look through this document. Was this document signed and executed anywhere by Brody Chemical?

## **Question**

## **Answer**

Please look at the name and address and phone number on page 1. Was this Mrs. Goldthorpe's address and phone in 2004?

Did this agreement come from her employment way back in 1999?

Did Jon Liddiard have the newer 2004 dates added?

So there is no valid employment or sales representative agreement existing for Mrs. Goldthorpe from 2004?

### **Email re lowering override**

I'm placing in front of you a document marked EXHIBIT 7. Do you recognize it?

What is it?

Were you a party to this email?

Were you aware of this email?

Does it say why Tammy agreed to lower her override?

Is it unusual for someone considered to be just an employee to voluntarily lower their payment to help out with costs?

Would you say this is evidence of an ownership interest to help the bottom line for the product?

Does this email also state that Mrs. Goldthorpe would also be paid for every WHITE WIZARD sale?

Did she help sell WHITE WIZARD?

Was Ms. Goldthorpe was paid an override for all products containing the WIZARD mark?

And do you believe that these payments were royalties or akin to royalties?

### **SLIPPERY WIZARD adoption/creation**

Did you come up with the name SLIPPERY WIZARD?

Were you involved with the creation or adoption of the name SLIPPERY WIZARD?

Who do you believe created and adopted the mark SLIPPERY WIZARD?

### **SLIPPERY WIZARD formula**

## **Question**

## **Answer**

Was the SLIPPERY WIZARD formula developed by Mrs. Goldthorpe?

Did she have the most knowledge about the composition and use of the product?

### **About Jon Liddiard**

Does Jon Liddiard have a chemistry degree?

Did he develop the formula or create the mark?

### **About Tammy Goldthorpe**

Did Mrs. Goldthorpe provide the formula?

Were you involved in the hiring of Mrs. Goldthorpe?

Were you aware of Mrs. Goldthorpe's hiring?

What do you know about her previous knowledge and experience with regards to asphalt release agents?

Did she have special knowledge and experience in 2004 or was she just another sales representative?

Did she control the composition and formula of the SLIPPERY WIZARD product?

Did she control the nature and quality of the SLIPPERY WIZARD product?

Did she control the advertising literature and instructions for SLIPPERY WIZARD?

Was she the most knowledgeable person regarding the SLIPPERY WIZARD product?

Did employees and customers generally associate Mrs. Goldthorpe as the source of the SLIPPERY WIZARD product?

We asked a lot of questions today. Did you understand my questions and give truthful, responsive answers to each question?

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

---

Brody Chemical Company,	)	
Inc.,	)	Deposition of:
	)	
Opposer,	)	<u>MATT FORSGREN</u>
	)	
vs.	)	
	)	
Goldthorpe, Tammy L. aka	)	Opposition No.
Tammy Price,	)	91/204,070
	)	
Applicant.	)	

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**May 20, 2013 \* 10:30 a.m.**

Location: CitiCourt  
236 South 300 East  
Salt Lake City, Utah

Reporter: Ashley Money, RPR  
Notary Public in and for the State of Utah

A P P E A R A N C E S

FOR THE OPPOSER:

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P R O C E E D I N G S

MATT FORSGREN,

called as a witness, being first duly sworn,  
was examined and testified as follows:

EXAMINATION

BY MR. WINESETT:

Q. I'm Nathan Winesett. I'm the attorney for the applicant, Tammy Goldthorpe, formerly known as Tammy Price. To your left is David Bray. He's the attorney for the opposer, Brody Chemical.

You realize you're under oath?

A. Yes.

Q. So the way this works is I'll be deposing you. I'll ask you questions and you'll give answers.

A. Okay.

Q. Our court reporter will transcribe those answers, so everything needs to be verbal, no nods, so forth. And only one person can talk at a time so she can keep up.

A. Okay.

Q. If you don't understand anything I ask you, just ask me to repeat it, and I'll do so.

A. Okay.

1           Q.     If there's an objection, let the -- don't  
2 speak over Mr. Bray so he can make his objection, but  
3 then you can go ahead and answer the question.

4           A.     Okay.

5           Q.     Can you please state your name and address  
6 for the record?

7           A.     Matt Forsgren, 1369 South Devonshire Drive  
8 in Salt Lake, Utah. 84108 is the ZIP code.

9           Q.     Can you please tell me how you prepared  
10 for this deposition?

11          A.     I was interviewed by you on the phone and  
12 we talked about the situation that Tammy is in.

13          Q.     Did I ask you some questions in this  
14 interview?

15          A.     Yes.

16          Q.     Did I provide you anything in writing?

17          A.     No.

18          Q.     Where do you currently work?

19          A.     Rhinehart Oil.

20          Q.     What is your job there?

21          A.     I'm the general manager of the chemical  
22 division.

23          Q.     Did you used to work for Brody Chemical?

24          A.     Yes.

25          Q.     When did you start working for Brody

1 Chemical?

2 A. Around 2002.

3 Q. Do you know if that was in the beginning  
4 of 2002 or in the end?

5 A. It would have been about the beginning of  
6 2002.

7 Q. When did you stop working for Brody  
8 Chemical?

9 A. In July of 2006.

10 Q. Okay. Did you work at Brody Chemical  
11 continuously through that time?

12 A. Yes.

13 Q. Who hired you in 2002?

14 A. Brandy Monserette.

15 Q. For what job were you initially hired?

16 A. Sales rep.

17 Q. Did that change?

18 A. Yes.

19 Q. How so?

20 A. A few months after I hired on as a sales  
21 rep, I became the Utah area manager.

22 Q. What happened after that?

23 A. Shortly after that, they named me the  
24 national sales manager.

25 Q. Is that a promotion?

1 A. Yes.

2 Q. When were you promoted to national sales  
3 manager?

4 A. It was probably three or so months after I  
5 was named Utah area manager.

6 Q. So were you -- in 2003, were you the  
7 national sales manager?

8 A. Yes.

9 (EXHIBIT 10 WAS MARKED.)

10 Q. (BY MR. WINESETT) All right. I'm placing  
11 in front of you what has been marked Exhibit 10,  
12 which is a copy of the original, which I am also  
13 handing to you, which is unable to be marked. Do you  
14 recognize this exhibit?

15 A. Yes.

16 Q. What is it?

17 A. This is my business card.

18 Q. Is it two-sided?

19 A. Yes.

20 Q. Does your business card indicate your  
21 title?

22 A. Yes, it does.

23 Q. What is your title?

24 A. National Sales Manager.

25 Q. Did you remain national sales manager from

1 2003 until you left Brody Chemical?

2 A. Yes.

3 Q. When you became national sales manager in  
4 2003, did Brody Chemical have an asphalt release  
5 product?

6 A. No.

7 Q. Did they have any kind of release product?

8 A. Yes.

9 Q. What was it?

10 A. Release Agent.

11 Q. Was it -- what was it used for?

12 A. It was a generic release agent used on  
13 conveyer belts as a release agent in addition to a  
14 couple of other products as release agents like  
15 concrete, truck chute release agent.

16 Q. Okay. Was it effective?

17 A. In the right application, yes. It's for  
18 conveyer belts as an example. It was effective.

19 Q. Was it effective for asphalt release?

20 A. No.

21 Q. Did you have an effective product for  
22 truck beds?

23 A. No.

24 Q. Are truck beds relevant to asphalt release  
25 agents?

1 A. Yes.

2 Q. How so?

3 A. That's how the asphalt from the batch  
4 plant is transported to the job site where it's then  
5 applied to the ground and laid down.

6 Q. And what does a release agent do?

7 A. The release agent acts as a sliding agent  
8 so the hot asphalt doesn't stick to the bed of the  
9 truck.

10 Q. Okay. Did the generic release agent that  
11 Brody Chemical sold -- did it sell well?

12 A. No.

13 Q. Did it sell well for conveyer belts and  
14 concrete chutes?

15 A. Yes.

16 Q. But not for asphalt release?

17 A. No.

18 Q. Was it intended for asphalt release?

19 A. No.

20 Q. When you became national sales manager at  
21 the beginning of 2003, were you knowledgeable  
22 generally about asphalt release agents in the  
23 marketplace?

24 A. No.

25 Q. Did you later begin to learn about asphalt

1 release agents?

2 A. Yes.

3 Q. What caused you to become interested in  
4 asphalt release agents?

5 A. Based on customers' demand and our other  
6 product line.

7 Q. When did customers start requesting  
8 specific asphalt release agent?

9 A. The summer of 2003.

10 Q. When -- is that when the season begins?

11 A. Yes.

12 Q. So is asphalt release a seasonal product?

13 A. Here in Utah, it is, yes, due to the  
14 temperatures.

15 Q. Did that cause you to start researching  
16 asphalt release agents in the marketplace?

17 A. Yes.

18 Q. Approximately when was that?

19 A. The summer of 2003 -- spring of 2003.

20 Q. When you were researching asphalt release  
21 agents, what asphalt release products did you find in  
22 the marketplace?

23 A. We found one out of Texas called Black  
24 Magic, and then we found the AS-12 as well at our  
25 current customers.



1 Q. Whose product was Black Magic?

2 A. A company out of Texas.

3 Q. And who was selling AS-12 at that time?

4 A. Tammy.

5 Q. Tammy?

6 A. Goldthorpe.

7 Q. Who was -- who was she selling it through?

8 A. Through RCAI.

9 Q. Do you know Tammy Goldthorpe, formerly  
10 known as Tammy Price?

11 A. Yes.

12 Q. When did you first meet Tammy Goldthorpe?

13 A. In a communications class in 2002.

14 Q. Was this at the beginning of 2002?

15 A. Yes, it would have been the very beginning  
16 of 2002.

17 Q. Was it before your employment at Brody  
18 Chemical?

19 A. Yes.

20 Q. As national sales manager, what were your  
21 duties?

22 A. To hire and train new sales reps as well  
23 as look at new products that we could bring in to our  
24 existing product line.

25 Q. Was one of your objectives to increase

1 sales?

2 A. Yes.

3 Q. How would you go about that?

4 A. By hiring new sales reps and see what the  
5 customers' demand was based on their needs.

6 Q. Was one of your objectives to bring in new  
7 products for Brody Chemical to resell?

8 A. Yes.

9 Q. How would you go about that?

10 A. For -- through trade shows, expos, working  
11 with all of our existing sales reps, seeing what the  
12 customers require, what its needs were, and then seek  
13 out to fulfill those.

14 Q. Did this sometimes entail seeking out  
15 third-party products?

16 A. Yes.

17 Q. Licensing other products?

18 A. Yes.

19 Q. Was one of your objectives to bring in new  
20 sales representatives?

21 A. Yes.

22 Q. Did you get a percentage of profits on  
23 everything sold by Brody Chemical?

24 A. I did not.

25 Q. How were you paid?

1           A.       I was paid on salary, plus a bonus trip  
2 with our President's Club on a vacation that we took  
3 our top sales reps on every year.

4           Q.       Are you familiar with the overall business  
5 structure at Brody Chemical at your time of national  
6 sales manager?

7           A.       Yes.

8           Q.       Who owned the company?

9           A.       Jon Liddiard.

10          Q.       Who was the president?

11          A.       Jon Liddiard.

12          Q.       Who was directly under him?

13          A.       Myself.

14          Q.       As the national sales manager?

15          A.       Yes, correct.

16          Q.       Are there -- were there any other national  
17 sales managers?

18          A.       No.

19          Q.       Who was directly under you?

20          A.       We had regional sales managers in  
21 California, Arizona, Colorado, and Montana.

22          Q.       Did regional managers get paid a salary?

23          A.       Yes.

24          Q.       Did regional managers get a percentage of  
25 sales?

1 A. They did, yes.

2 Q. Percent of what?

3 A. Percentage of total gross profit for their  
4 direct sales reps.

5 Q. Was this just for sales in their region?

6 A. Yes.

7 Q. Who was directly under each regional  
8 manager?

9 A. Their -- the sales reps that they oversaw.

10 Q. Did bringing in new products and new sales  
11 representatives help increase sales?

12 A. Yes.

13 Q. Was it to your advantage?

14 A. Yes.

15 Q. Was it to Brody Chemical's advantage?

16 A. Yes.

17 Q. Did Brody Chemical expect you to go out  
18 and get new products?

19 A. Yes.

20 Q. While you were at Brody Chemical, what new  
21 products did you bring in?

22 A. We brought a line of aerosols on, we  
23 brought some hand cleaners on, a number of products  
24 throughout my employment there, including the asphalt  
25 release products.

1 Q. Were many of those products owned by  
2 others?

3 A. Yes.

4 Q. Can you give me some examples?

5 A. Spraywaves, an aerosol manufacturer. They  
6 manufacture a number of aerosols that we private  
7 label. Claire is another aerosol manufacturer.  
8 Amrap is another aerosol manufacturer that we sold  
9 their product. A hand cleaner made by Royal  
10 Solutions, Shepard Brothers, is another product. And  
11 then Slippery Wizard with Tammy.

12 Q. I'm placing in front of you a document  
13 marked Exhibit 8. Do you know what this document is?

14 A. It looks like a Brody Chemical industrial  
15 catalog.

16 Q. Do you recognize some of the products in  
17 this catalog? Take a second to look through it.

18 A. Yes.

19 Q. Do you recognize some of the products in  
20 this catalog?

21 A. Yes.

22 Q. Does this brochure advertise products that  
23 were sold by Brody Chemical while you were there?

24 A. Some of them, yes.

25 Q. Are some of those products -- excuse me.

1 Can you identify some of those products that were  
2 sold by Brody Chemical while you were at Brody  
3 Chemical?

4 A. Yes. The Acrylic Urethane Sealer adhesive  
5 spray, Aircraft Cleaner. A number of these products  
6 were definitely sold when I was there. Chain and  
7 Cable Lube such as degreaser, Coil Cleaner.

8 Q. Are any of those products that were sold  
9 by Brody Chemical while you were there not owned by  
10 Brody Chemical?

11 A. Yes.

12 Q. Are they advertised in that catalog?

13 A. Yes.

14 Q. Can you identify some of them?

15 A. Yes. Adhesive Spray Aerosol would have  
16 been one of the aerosol manufacturers that they  
17 private labeled. Barrier Cream Aerosol, same. Chain  
18 and Cable Lube, Coil Cleaner, Contact Cleaner.

19 Q. Is there a lot of them?

20 A. There's a lot of them. I could go through  
21 this book page by page and let you know the ones that  
22 we just brought in and private labeled versus  
23 manufacture.

24 Q. Does this Brody Chemical product catalog  
25 include a product called Slippery Wizard?

1 A. Yes.

2 Q. What page is it on?

3 A. Page 6.

4 Q. What is it?

5 A. It's an asphalt release agent.

6 Q. Is this product owned by Brody Chemical?

7 A. No.

8 Q. Whose product is it?

9 A. Tammy's.

10 Q. Is it sold by Brody Chemical?

11 A. Yes.

12 Q. Does this product -- Brody Chemical  
13 catalog include a product called White Wizard?

14 A. Yes.

15 Q. What page is it on?

16 A. Page 6.

17 Q. According to the catalog, what is it?

18 A. It's another asphalt release agent.

19 Q. Does this Brody Chemical product catalog  
20 include a product called Clear Wizard?

21 A. Yes.

22 Q. What page is it on?

23 A. Page 6.

24 Q. According to the catalog, what is it?

25 A. Another asphalt release agent.

1 Q. Did Brody Chemical sell White Wizard or  
2 Clear Wizard during your time at Brody Chemical?

3 A. No.

4 Q. According to the catalog, are White  
5 Wizard, Clear Wizard, and Slippery Wizard all asphalt  
6 release agents?

7 A. Yes.

8 Q. Are the marks White Wizard and Clear  
9 Wizard similar in appearance to you to Slippery  
10 Wizard?

11 A. Yes.

12 Q. Are the marks White Wizard and Clear  
13 Wizard similar in sound to Slippery Wizard?

14 A. Yes.

15 Q. Are the marks White Wizard and Clear  
16 Wizard similar in connotation to Slippery Wizard?

17 A. Yes.

18 Q. Are the marks White Wizard and Clear  
19 Wizard similar in commercial impression to Slippery  
20 Wizard?

21 A. Yes.

22 Q. Are the marks White Wizard and Clear  
23 Wizard each commercially similar to Slippery Wizard?

24 A. Yes.

25 Q. Looking at this catalog, would you expect



1       that White Wizard and Clear Wizard would also be  
2       owned by Mrs. Goldthorpe?

3                   MR. BRAY:  Objection, form, foundation,  
4       relevance.

5           A.       Yes.  They seem to all be in the same  
6       family as the Wizard family.  One seems to have a  
7       water soluble dilution higher than the other.  They  
8       all seem to be in the same family of products.

9           Q.       (BY MR. WINESETT)  As -- in your duties at  
10      Rhinehart Oil, do you frequently look at products in  
11      the marketplace?

12      A.       Yes.

13      Q.       Including asphalt release?

14      A.       Yes.

15      Q.       Would it be your impression, looking at  
16      this catalog, that Clear Wizard and White Wizard  
17      would also be owned by Slippery Wizard?

18                   MR. BRAY:  Form, foundation, relevance.

19      A.       Yes.

20      Q.       (BY MR. WINESETT)  Can you please repeat  
21      your answer?

22      A.       Yes.

23                   MR. BRAY:  Same objection.

24      Q.       (BY MR. WINESETT)  Would you be likely to  
25      be confused as to the source of the product if they

1 had different owners?

2 A. Yes.

3 Q. How come?

4 A. Because they're all in the same family,  
5 Asphalt release, last name Wizard.

6 Q. Okay.

7 A. One seems to be clear, one seems to be  
8 white, and slippery seems to be another named release  
9 agent.

10 Q. Was Slippery Wizard one of the new  
11 products that you brought in, as manager, for Brody  
12 Chemical to sell?

13 A. Yes.

14 Q. Whose product was Slippery Wizard?

15 MR. BRAY: Objection, form.

16 A. Tammy's.

17 Q. (BY MR. WINESETT) Tammy who?

18 A. Tammy Price.

19 Q. Did you keep in touch with Tammy  
20 Goldthorpe, formerly known as Tammy Price, after  
21 meeting her in 2002?

22 A. Yes.

23 Q. Where was she when you became national  
24 sales manager in 2003?

25 A. She was working in Salt Lake.

1 Q. What -- did she have her own business?

2 A. Yes.

3 Q. Did she have a colleague?

4 A. Yes.

5 Q. Who was that?

6 A. Steve Madsen.

7 Q. Where was their business?

8 A. Off California Avenue on the west side of  
9 Salt Lake.

10 Q. What did they do?

11 A. They manufactured, sold, delivered asphalt  
12 release.

13 Q. Do you know Steve Madsen?

14 A. Yes.

15 Q. What is his specialty?

16 A. Blending chemicals, water treatment,  
17 sales, delivery.

18 Q. Is he a chemist?

19 A. I don't know if he has a chemical degree,  
20 but that's how I've always known him as blending  
21 formulas for water treatment and other products.

22 Q. Were they involved with RCAI?

23 A. Yes.

24 Q. Were they involved with a product called  
25 ASA-12?

1 A. Yes.

2 Q. Was it your understanding that ASA-12 was  
3 Tammy Goldthorpe's product?

4 A. Yes.

5 Q. Did you want to bring in the ASA-12  
6 product?

7 A. Yes.

8 Q. Did you attempt to get Tammy Goldthorpe to  
9 license her ASA-12 product to Brody Chemical?

10 A. Yes.

11 Q. When did you start trying to get Tammy's  
12 product?

13 A. Made contact about the product in the  
14 spring of 2003.

15 Q. Was she interested?

16 A. She wasn't -- she wasn't extremely  
17 interested at that time.

18 Q. Did you continue to negotiate with her?

19 A. Yes. I kept in touch with her and kept  
20 after her over the course of the next year to see if  
21 she would be interested in bringing her product over.

22 Q. Did you represent that she would be paid  
23 royalties to license her product?

24 A. Yes.

25 Q. Is this what she asked for?

1 A. Yes.

2 Q. Did she want to use the ASA-12 mark?

3 A. No.

4 Q. Did she want to come up with a different  
5 mark to use with this asphalt release product?

6 A. Yes.

7 Q. What mark did she choose?

8 A. Slippery Wizard.

9 Q. Had you ever heard the mark Slippery  
10 Wizard before?

11 A. No.

12 Q. And you heard this mark from Tammy  
13 Goldthorpe?

14 A. Yes.

15 Q. Did she already have the mark while you  
16 were negotiating?

17 A. Yes.

18 Q. Was this prior to October of 2004?

19 A. Yes.

20 Q. Did you approach Jon Liddiard about  
21 licensing Tammy Goldthorpe's product?

22 A. Yes.

23 Q. Was he interested?

24 A. Yes.

25 Q. Did you tell him about the mark Slippery

1 Wizard?

2 A. Yes.

3 Q. What happened then?

4 A. He made fun of the name, called it  
5 Slippery Lizard, and didn't know how that name would  
6 go over. But that's the name she had chosen, so --

7 Q. Did he still want to sell the product?

8 A. Yes.

9 Q. Did he suggest a royalty amount for Tammy  
10 Goldthorpe's product?

11 A. No.

12 Q. Who suggested a royalty amount?

13 A. She did, Tammy.

14 Q. What amount?

15 A. A dollar a gallon on every gallon sold as  
16 a royalty.

17 Q. Did Brody Chemical make a counteroffer?

18 A. Yes. He offered \$0.50 a gallon.

19 Q. Did Tammy Goldthorpe accept this?

20 A. No.

21 Q. Did she reject it?

22 A. Yes.

23 Q. Did she counteroffer?

24 A. Yes, back at the original dollar a gallon.

25 Q. Did Brody Chemical agree to the dollar per

1 gallon?

2 A. Yes.

3 Q. Did Jon agree to the dollar per gallon?

4 A. Yes.

5 Q. Did you also approach Tammy Goldthorpe  
6 about being a sales representative?

7 A. Yes.

8 Q. Why were you interested in Tammy  
9 Goldthorpe becoming a sales representative?

10 A. To bring her customer base and knowledge  
11 into -- back into the company.

12 Q. She had her own accounts?

13 A. Yes.

14 Q. Were you aware that Tammy Goldthorpe  
15 worked at Brody Chemical in the late 1990s?

16 A. Yes.

17 Q. Was she interested in becoming a sales rep  
18 like before?

19 A. Not entirely, no.

20 Q. Did she want to do her own thing?

21 A. Yes.

22 Q. Did she want to sell and promote her  
23 Slippery Wizard product?

24 A. Yes.

25 Q. Did you tell her that Brody Chemical had

1 the ability to blend her Slippery Wizard product?

2 A. Yes.

3 Q. Did you tell her that Brody Chemical had  
4 the ability to package and ship her Slippery Wizard  
5 product?

6 A. Yes.

7 Q. Did you propose a royalty to Tammy  
8 Goldthorpe on behalf of Brody Chemical to allow Brody  
9 Chemical to make and sell the Slippery Wizard product  
10 and use the Slippery Wizard mark?

11 A. Yes.

12 Q. What was it?

13 A. A dollar a gallon override on every gallon  
14 sold.

15 Q. Did she orally accept this royalty?

16 A. Yes.

17 Q. Were these terms accepted by Brody  
18 Chemical?

19 A. Yes.

20 Q. Were they accepted by Jon Liddiard?

21 A. Yes.

22 Q. Did you introduce Tammy Goldthorpe and her  
23 Slippery Wizard to all of Brody Chemical?

24 A. Yes.

25 Q. Where did you do this?



1           A.     At a national sales meeting with all the  
2 sales reps.

3           Q.     When was this?

4           A.     It would have been spring of 2005.

5           Q.     Who introduced her?

6           A.     Jon did. Jon Liddiard did.

7           Q.     Was the Slippery Wizard product introduced  
8 as her product?

9           A.     Yes.

10                   **(EXHIBIT 11 WAS MARKED.)**

11           Q.     (BY MR. WINESETT) I'm placing in front of  
12 you a DVD disc marked Exhibit 11. Do you recognize  
13 this disc?

14           A.     Yes.

15           Q.     What is it?

16           A.     This is a World of Asphalt DVD.

17           Q.     What does the label say?

18           A.     "Brody Chemical."

19           Q.     What else?

20           A.     "World of Asphalt," with Brody Chemical's  
21 website and information and 1-800 number.

22           Q.     Okay. What did you use this disc for?

23           A.     As a sales tool and product knowledge  
24 information to customers.

25           Q.     Did you create the video on this disc?

1 A. No.

2 Q. Where did it come from?

3 A. It came from a training video from the  
4 World of Asphalt.

5 Q. And when was the video made?

6 A. 2003.

7 Q. Why did Brody Chemical play this video at  
8 the national sales meeting?

9 A. It shows Tammy being interviewed by a news  
10 station that was doing a piece on the World of  
11 Asphalt as an instructional video. It shows the work  
12 crews laying the asphalt on the hot road as Tammy was  
13 dictating what was going on with the release agents  
14 and how it works with the asphalt industry.

15 Q. Was this part of the Slippery Wizard  
16 introduction at the 2005 national sales meeting?

17 A. Yes.

18 Q. Was it part of the introduction of Tammy  
19 Goldthorpe as the owner of Slippery Wizard?

20 MR. BRAY: Objection, form.

21 A. Yes.

22 Q. (BY MR. WINESETT) Okay.

23 MR. WINESETT: For the record, I'm placing  
24 the DVD in the video player.

25 Q. (BY MR. WINESETT) I forgot to ask you,

1 did Brody Chemical play the entire video at the  
2 national sales manager meeting?

3 A. A good percentage of it, but not the  
4 entire video. Reps tend to get rambunctious if the  
5 lights are off, watching a video too long. Not the  
6 entire video, just a portion of it, as I recall.

7 Q. I've got the computer working. I've got  
8 the menu screen for the video up. Is there a date of  
9 the recording on the menu screen?

10 A. Yes.

11 Q. What is it?

12 A. Looks like March 7, 2005.

13 Q. Is that around the time of the national  
14 sales meeting?

15 A. Yes.

16 MR. WINESETT: Okay. I'm going to play  
17 the initial title sequence. This is the attorney  
18 asking.

19 Q. (BY MR. WINESETT) What is the title of  
20 the video?

21 A. "World of Asphalt, 2003, Show and  
22 Conference."

23 Q. Okay. I am going to fast forward to the  
24 time 54 minutes and 50 seconds.

25

1 (START VIDEO RECORDING:)

2 UNIDENTIFIED MAN: Participating in the  
3 show in our next segment, we're going to talk about  
4 release agents, and I'd like to bring in Tammy Price  
5 from RCAI.

6 Good afternoon, Tammy.

7 MS. PRICE: Hi, Jason. How are you doing?

8 UNIDENTIFIED MAN: Good. How are you? As  
9 know when you wrote this material, we're out at the  
10 asphalt plant. We need to put release agents in the  
11 trucks. And in the past, this industry has used  
12 petroleum-based release agents, and that's a process  
13 that's moving away from us.

14 Can you tell me a little bit about why  
15 we're not using petroleum-based release agents  
16 anymore?

17 MS. PRICE: Well, petroleum-based release  
18 agents not only can affect the groundwater if used in  
19 excessive use, but they also can change the  
20 composition of the asphalt, which are two things you  
21 don't want to see happen.

22 UNIDENTIFIED MAN: Absolutely, because if  
23 we change the composition of the asphalt, then  
24 something doesn't good happen down the road. You do  
25 non-petroleum-based release agents. Do they have any

1 effect on safety or handling procedures for the  
2 crews?

3 MS. PRICE: Well, a couple things that you  
4 want to look for when choosing a release agent of  
5 non-petroleum. You want to make sure that it doesn't  
6 change the composition and it's not flammable or  
7 caustic and it adheres to the metal of the bed.

8 UNIDENTIFIED MAN: Well, obviously,  
9 there's one basic question that I accidentally  
10 overlooked. Why do we use release agents on truck  
11 beds?

12 MS. PRICE: Well, release agents are  
13 important for the fact that you want to be able to  
14 utilize all the material in the haul and also avoid  
15 the cost of shipping and cleaning the trucks at the  
16 end of the day.

17 UNIDENTIFIED MAN: Okay. Excellent.  
18 Thank you. And can you give us any tips or  
19 recommendations for applying release agents?

20 MS. PRICE: Well, there's several  
21 application systems out there to apply the release  
22 agent. Some keys things you want to look for is does  
23 the release agent itself adhere to the metal?  
24 There's several products out there that are water  
25 based, and water tends to evaporate and they don't

1       become quite as effective.

2                       So make sure that you're getting the most  
3       effectiveness out of your product and application.  
4       Make sure it has a wide-range spread.

5                       UNIDENTIFIED MAN: Great. Thank you,  
6       Tammy. What should we keep in mind from the  
7       contractor or specifying agency when they're looking  
8       at making a selection for a non-petroleum-based  
9       release agent?

10                      MS. PRICE: Well, there's really two key  
11       points you want to look for, cost and effectiveness  
12       of the product. How many times do you -- are you  
13       able to apply the product and get effective loads?  
14       So cost and effectiveness.

15                      UNIDENTIFIED MAN: Tammy, thank you very  
16       much. We appreciate your help this afternoon.

17                      MS. PRICE: Thank you.

18                      (End of video recording.)

19

20                      MR. WINESETT: Okay. I have stopped the  
21       video at 57 minutes and 14 seconds.

22                      Q.       (BY MR. WINESETT) Was the clip you just  
23       saw played at the national sales meeting?

24                      A.       Yes.

25                      Q.       Who was interviewed in the video?

1 A. Tammy Price.

2 Q. Did she appear knowledgeable about asphalt  
3 release?

4 A. Yes.

5 Q. While you were at Brody Chemical, did  
6 Tammy Goldthorpe control the composition and formula  
7 of the Slippery Wizard product?

8 A. Yes.

9 Q. Did she control the nature and quality of  
10 the Slippery Wizard product?

11 A. Yes.

12 Q. Did she control the advertising literature  
13 and instructions for Slippery Wizard?

14 A. Yes.

15 Q. Was she the most knowledgeable person  
16 regarding the Slippery Wizard product?

17 A. Yes.

18 Q. Did employees and customers generally  
19 associate Mrs. Goldthorpe as the source of the  
20 Slippery Wizard product?

21 A. Yes.

22 MR. BRAY: Objection, form, foundation.

23 Q. (BY MR. WINESETT) Did you associate  
24 Mrs. Goldthorpe as the source of the Slippery Wizard  
25 product?

1 A. Yes.

2 Q. Do you still associate Mrs. Goldthorpe as  
3 the source of the Slippery Wizard product?

4 A. Yes.

5 Q. We asked you a lot of questions today.  
6 Did you understand my questions and give truthful,  
7 responsive answers?

8 A. Yes.

9 MR. WINESETT: Thank you. That's all I  
10 have.

11 EXAMINATION

12 BY MR. BRAY:

13 Q. Matt, I just have a few questions.

14 A. Sure.

15 Q. Just picking up where Nathan left off, you  
16 left Brody Chemical in July 2006?

17 A. Yes.

18 Q. So you have no knowledge regarding who  
19 controlled the formula at Brody Chemical after you  
20 left, correct?

21 A. Correct.

22 Q. And do you have any knowledge as to the  
23 present formulation of the Brody Chemical Slippery  
24 Wizard product?

25 A. No, I don't.



1           Q.     Do you have any knowledge as to whether  
2 the formula changed after July 2006?

3           A.     No, I don't.

4           Q.     I think you said that the Slippery Wizard  
5 product that began -- the Slippery Wizard product  
6 began to be sold by Brody when?

7           A.     2004 we sold a little bit out of state to  
8 some of Tammy's customers during the winter in  
9 Arizona and Phoenix, as I recall. And then the  
10 summer of 2005 is when, you know, it became hot and  
11 heavy.

12          Q.     Okay. Is it your understanding that the  
13 product that was initially sold under the Slippery  
14 Wizard name by Brody Chemical was -- the formula was  
15 identical to the RCAI ASA-12 product?

16          A.     Yes.

17          Q.     And RCAI, to your knowledge, never sold an  
18 asphalt release product under the name Slippery  
19 Wizard, correct?

20          A.     Correct.

21          Q.     When they sold an asphalt release product,  
22 it was always under ASA-12?

23          A.     Correct.

24          Q.     Do you know what happened to RCAI? Was it  
25 still in business after Tammy left?

1 A. I have no idea.

2 Q. And what's your present position with  
3 Rhinehart Oil?

4 A. I'm the general manager of the chemical  
5 division.

6 Q. Does Rhinehart sell, generally speaking,  
7 products that are competitive with products sold by  
8 Brody?

9 A. Yes.

10 Q. Are you familiar today in your position  
11 with Rhinehart Oil as to the asphalt release agents  
12 that are in the market?

13 A. No.

14 Q. To your knowledge, has anybody sold a  
15 product under the name Slippery Wizard except Brody  
16 Chemical?

17 A. No.

18 Q. So just to clarify for the record, you're  
19 not aware of anybody selling a product called  
20 Slippery Wizard except the product that was sold by  
21 Brody Chemical?

22 A. Not to my knowledge.

23 Q. Did you make any effort to reduce whatever  
24 the agreement was that you testified you reached with  
25 Tammy Price to writing?

1 A. Yes.

2 Q. And was there a writing?

3 A. Yes.

4 Q. And I'm handing you what's been marked as  
5 Exhibit 4. Is Exhibit 4 the writing?

6 A. Yes. I wasn't present during the time of  
7 this document. It was all verbal when we initiated  
8 with Tammy.

9 Q. Okay. Did you play any role in  
10 negotiating that document, Exhibit 4?

11 A. Yes, the dollar a gallon override.

12 Q. Let me be clear. Separate from the terms  
13 of the agreement, did you play any role going back  
14 and forth with Tammy with regard to this piece of  
15 paper?

16 A. Not the piece of paper. It was all  
17 verbal.

18 Q. Now, you testified, looking at Exhibit 8,  
19 regarding certain products that Brody sold that were  
20 private labeled.

21 A. Yes.

22 Q. And that means the product was kind of  
23 purchased off the shelf from the third party and then  
24 Brody had permission from that party to put their own  
25 label on it?

1 A. Correct.

2 Q. Do you know whether -- and I think you  
3 gave me a couple of examples of adhesive spray  
4 aerosol; is that right?

5 A. Correct.

6 Q. Were you familiar with the contracts that  
7 Brody entered into with those third parties to  
8 private label their goods, private --

9 A. No.

10 Q. Do you know whether or not any of those  
11 contracts were verbal?

12 A. I have no idea. I wasn't involved with  
13 those contracts, so --

14 Q. Fair enough. Do you know whether or not  
15 Brody paid for the product it purchased and then sold  
16 or whether Brody paid some sort of commission or  
17 royalty of a certain amount per gallon with regard to  
18 other third-party products?

19 A. I have no idea. I wasn't involved with  
20 any of those negotiations.

21 Q. Fair enough. You've said when you were  
22 the national sales representative for Brody Chemical  
23 one of your duties was to hire and train new sales  
24 representatives.

25 A. Correct.

1 Q. And you did hire Tammy Price as a sales  
2 representative, correct?

3 A. Correct.

4 Q. And she became employed by Brody Chemical  
5 as a sales representative in approximately  
6 October 2004, correct?

7 A. Yes.

8 Q. There was no doubt in your mind as to the  
9 fact that she was an employee of Brody Chemical,  
10 correct?

11 MR. WINESETT: Objection, legal  
12 conclusion.

13 A. Yes. She worked for Brody.

14 Q. (BY MR. BRAY) Going back to Exhibit 4,  
15 Matt, you talked about having verbally negotiated the  
16 dollar per gallon. Remember that?

17 A. Yes.

18 Q. Did you verbally negotiate or -- strike  
19 that.

20 Did you negotiate with Ms. Price the deal  
21 term .3?

22 A. No.

23 Q. Is it your understanding that that term  
24 was negotiated between Jon Liddiard and Tammy Price?

25 A. No.

1           Q.     You don't know where that term came from,  
2     the splitting of travel expenses?

3           A.     No.

4           Q.     Fair enough. I can only ask you what you  
5     do know.

6           A.     Yeah.

7           Q.     Were there any terms with regard to the  
8     verbal agreement -- so -- strike that.

9                     Was it your understanding that the verbal  
10    agreement was in place from the beginning, October of  
11    2004, up until the time that Exhibit 4 was executed?

12          A.     Yes.

13          Q.     Were there any other terms of your verbal  
14    agreement with Ms. Price/Ms. Goldthorpe that aren't  
15    reflected in Exhibit 4?

16          A.     Not that I'm aware of.

17          Q.     When you hired -- during your term as the  
18    national sales manager for Brody Chemical, when you  
19    hired new sales representatives, did you have them  
20    sign a sales representative agreement?

21          A.     Yes.

22          Q.     Did you have Ms. Price sign a sales  
23    representative agreement with Brody?

24          A.     She declined to sign it.

25          Q.     Did she say why?

1           A.       No, just she wasn't comfortable with the  
2 contract.

3           Q.       Okay. But did she identify any particular  
4 points?

5           A.       No.

6           Q.       Did you have any discussions with anybody  
7 at Brody regarding her not being comfortable with the  
8 standard sales representative agreement?

9           A.       Jon Liddiard, the owner.

10          Q.       Describe for me that conversation.

11          A.       I just let him know she wasn't comfortable  
12 with the contract and she wasn't comfortable signing  
13 it.

14          Q.       Okay. If you look at Exhibit 8, page 6,  
15 which is the Brody catalog, in Exhibit 8, the  
16 Slippery Wizard product is not identified as Tammy  
17 Goldthorpe's Slippery Wizard product, correct?

18          A.       Correct.

19          Q.       During the time that you were the national  
20 sales representative for Brody Chemical, it's true  
21 that Brody Chemical did not label any of its asphalt  
22 release products Tammy Goldthorpe's Slippery Wizard?

23          A.       Correct.

24          Q.       Brody just labeled the product Slippery  
25 Wizard?

1           A.       Correct.

2           Q.       In your mind, did the deal that you  
3 negotiated verbally with Ms. Price restrict Brody  
4 Chemical from developing its own asphalt release  
5 product?

6           A.       Not to my knowledge.

7           Q.       So if they came up with a new formula, it  
8 would have been okay with them in terms of the  
9 negotiation -- in terms of the agreement that you  
10 verbally negotiated with Ms. Price, that would not  
11 have been a violation of that verbal agreement,  
12 correct?

13          A.       Not to my knowledge.

14          Q.       Okay. And did you have any -- well, as  
15 the person that you testified negotiated the verbal  
16 agreement with Ms. Price, the -- one of the deal  
17 points was that for each gallon of Slippery Wizard  
18 sold, not including her own sales, Tammy will receive  
19 an override of \$1 per gallon, right?

20          A.       Correct.

21          Q.       In your mind, did -- were you paying --  
22 was Brody paying a dollar a gallon for rights to use  
23 the formula or rights to use the Slippery Wizard  
24 trademark?

25          A.       They came hand in hand. When she came



1 from RCAI, they came together. They were both part  
2 of bringing Tammy on board under her conditions.

3 Q. Were there any writings other than  
4 Exhibit 4 that reflected a negotiation between  
5 yourself and Ms. Price regarding the payment of  
6 override commissions on a Slippery Wizard product?

7 A. No.

8 Q. Would it be fair to say that from your  
9 perspective, negotiating a verbal agreement with  
10 Ms. Price, the \$1 a gallon override, that was being  
11 paid by Brody Chemical for both the formulation and  
12 the Slippery Wizard mark?

13 A. Correct.

14 Q. Do you know whether or not the Slippery  
15 Wizard formula that Brody Chemical used when  
16 Ms. Goldthorpe began working for Brody Chemical again  
17 in October 2004 contained a surfactant?

18 A. No idea. I wasn't involved with the  
19 formulation. That was proprietary between Tammy and  
20 Jon.

21 Q. Fair enough.

22 MR. BRAY: I have nothing further.

23 MR. WINESETT: Redirect.  
24  
25

FURTHER EXAMINATION

BY MR. WINESETT:

Q. In your experience as national sales manager for Brody Chemical and the general manager at Rhinehart Oil, could someone tweak a formula and make a derivative and slight change and evade a license and royalty agreement?

MR. BRAY: Objection, form, foundation, relevance.

A. I could imagine it could be done, yes.

Q. (BY MR. WINESETT) Would that be ethical?

A. No.

Q. Was it your understanding that Tammy Goldthorpe's Slippery Wizard formula was -- and any derivatives from it would be paid a dollar per gallon so long as Brody Chemical sold it?

A. Yes.

Q. Regardless of the formula, if Brody Chemical continues to use the Slippery Wizard mark, would they still be obligated to pay Tammy Goldthorpe?

MR. BRAY: Objection, form, foundation.

A. Yes.

Q. (BY MR. WINESETT) That -- was that your understanding?

1           A.       Yes. In the verbal negotiations, there  
2 was never a time limit to expire the royalties that  
3 we were going to pay Tammy.

4           Q.       So the contract was at-will?

5           A.       Yes. No expiration date.

6           Q.       Can we please hand him Exhibit 4? Can you  
7 please review this document and let me know if  
8 there's any term or if it's at-will?

9           A.       No term, no expiration date.

10          Q.       Could Jon Liddiard or Brody Chemical have  
11 developed a comparable asphalt release agent product  
12 without the knowledge and experience of Tammy  
13 Goldthorpe?

14                 MR. BRAY: Objection, form, foundation,  
15 relevance.

16          A.       I would say yes. They could utilize the  
17 formula that Jon Liddiard knew and change a few  
18 things. It could be done --

19          Q.       (BY MR. WINESETT) The formula -- and  
20 could he do that from the formula he learned from  
21 Tammy Goldthorpe?

22          A.       No, he couldn't. He couldn't -- this was  
23 a completely different product that we had ever heard  
24 about or seen before, and Jon had no idea where to  
25 even start with the asphalt release agent like the

1 ones we'd seen on the market based on our experience  
2 with the existing release agent that we had.

3 Q. He didn't have sufficient knowledge to  
4 develop an asphalt release agent such as Slippery  
5 Wizard?

6 A. Correct.

7 MR. BRAY: Objection, form, foundation,  
8 relevance.

9 Q. (BY MR. WINESETT) Was it Brody Chemical's  
10 inability to manufacture a comparable asphalt release  
11 agent that led you to negotiate a license and royalty  
12 for the Slippery Wizard product?

13 A. Yes.

14 MR. BRAY: Objection, form, foundation,  
15 relevance.

16 Q. (BY MR. WINESETT) I'm not quite sure, but  
17 I believe you said Rhinehart Oil was a competitor  
18 with Brody Chemical.

19 A. We compete on -- we have some of the  
20 similar products.

21 Q. Do you have an ownership interest in  
22 Rhinehart Oil?

23 A. No.

24 Q. I was unclear as to whether you said you  
25 were familiar with asphalt release agents in the

1 marketplace.

2 A. Today?

3 Q. Are you generally aware of asphalt release  
4 agent products in the marketplace?

5 A. Generically, yes. We don't sell an  
6 asphalt release agent at Rhinehart, so I'm not as  
7 current with the marketplace right now. We -- as  
8 Brody, in charge of bring on new products and  
9 whatnot. But we have not sold an asphalt release at  
10 Rhinehart.

11 Q. Do you continue to keep in contact with  
12 any manufacturers or suppliers regarding asphalt --  
13 that are involved in asphalt release agent product?

14 A. Yes.

15 Q. Do those contacts -- are they familiar  
16 with Slippery Wizard?

17 A. Yes.

18 Q. Is it your understanding that they know  
19 Tammy Goldthorpe as the creator and owner of Slippery  
20 Wizard?

21 A. Yes.

22 MR. BRAY: Objection, form, foundation,  
23 hearsay, relevance.

24 Q. (BY MR. WINESETT) When you say Tammy  
25 Goldthorpe worked for Brody Chemical, are you

1 referring to sales of Brody Chemical products other  
2 than Slippery Wizard?

3 A. No.

4 Q. Are you -- let me rephrase that. With  
5 regards to Slippery Wizard, would you consider Tammy  
6 Goldthorpe during your time to be independent?

7 MR. BRAY: Objection, form.

8 A. Selling just that one product was part of  
9 the terms of her coming back to sell her product.  
10 She didn't want to sell degreasers and floor cleaners  
11 and hand soap. She wanted to focus on her product  
12 and her product only.

13 Q. (BY MR. WINESETT) Was she in charge of  
14 that product?

15 A. Yes.

16 Q. She was the boss?

17 A. Yes.

18 Q. Did she sell certain other products that  
19 were not Slippery Wizard?

20 A. If a customer requested something, then  
21 yes, she would sell that.

22 Q. So she sold to her customers some of Brody  
23 Chemical products if they requested it?

24 A. Yes.

25 Q. And she was paid as an employee for those

1 products?

2 A. Correct.

3 Q. But not for Slippery Wizard?

4 A. No.

5 MR. WINESETT: Okay. I have no further  
6 questions.

7 MR. BRAY: Okay.

8 (Deposition concluded at 11:44 a.m.)

9

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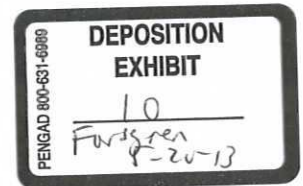
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

---

Brody Chemical Company,	)	
Inc.,	)	Deposition of:
	)	
Opposer,	)	<u>NANCY AYERS</u>
	)	
vs.	)	
	)	
Goldthorpe, Tammy L. aka	)	Opposition No.
Tammy Price,	)	91/204,070
	)	
Applicant.	)	

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**May 20, 2013 \* 3:30 p.m.**

Location: CitiCourt  
236 South 300 East  
Salt Lake City, Utah

Reporter: Ashley Money, RPR  
Notary Public in and for the State of Utah

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P R O C E E D I N G S

NANCY AYERS,

called as a witness, being first duly sworn,  
was examined and testified as follows:

EXAMINATION

BY MR. WINESETT:

Q. Hi, Mrs. Ayers. I'm Nathan Winesett. I represent the applicant, Tammy Goldthorpe. To your left is David Bray. He's the attorney for the opposer, Brody Chemical. You realize you're under oath?

A. Yes.

Q. The way this works, I will ask you a question and you will give an answer. The court reporter will transcribe it, so only one person can talk at a time and everything needs to be verbal so she can write it down.

A. Okay.

Q. Can you please state your name and address for the record?

A. Nancy Ayers, 2138 Royal Harvest Way, Cottonwood Heights, 84121.

Q. Do you currently work for Brody Chemical?

1 A. No.

2 Q. Did you used to work for Brody Chemical?

3 A. Yes.

4 Q. When did you start working for Brody  
5 Chemical?

6 A. July of 2000.

7 Q. When did you stop working for Brody  
8 Chemical?

9 A. December of 2010.

10 Q. Did you work at Brody Chemical  
11 continuously through 2010?

12 A. Yes.

13 Q. Who hired you in July 2000?

14 A. Jon Liddiard.

15 Q. For what job were you hired?

16 A. Sales rep.

17 Q. For what region?

18 A. Salt Lake, primarily.

19 Q. Did you have prior experience as a sales  
20 representative?

21 A. Yes.

22 Q. Where was that?

23 A. G&K Services. They're like a uniform  
24 company. And then I also sold at Nordstrom.

25 Q. What did you sell?

1           A.     At G&K, it was uniform services; and  
2 Nordstrom, it was clothes.

3           Q.     What were you hired at Brody Chemical to  
4 sell?

5           A.     Chemicals.

6           Q.     Did you have to be trained?

7           A.     Yes.

8           Q.     Who trained you at Brody Chemical?

9           A.     Matt Forsgren, primarily.

10          Q.     Who else helped with your training?

11          A.     Tammy -- Tammy Goldthorpe. It was Price  
12 at the time.

13          Q.     Is this the first time you met Tammy  
14 Goldthorpe?

15          A.     Yes.

16          Q.     Did Mrs. Goldthorpe continue to train you?

17          A.     No.

18          Q.     How come?

19          A.     She left the company.

20          Q.     When was the next time you saw Tammy  
21 Goldthorpe?

22          A.     Several years later she came, and I  
23 believe the first time I saw her was at Brody -- the  
24 warehouse or the corporate office, just a rep meeting  
25 with the Utah reps.

1 Q. Did you recognize her as the person who  
2 helped train you several years before?

3 A. Uh-huh (affirmative).

4 Q. What happened at that meeting?

5 A. She was -- Jon introduced her, and she did  
6 some training about a product she was bringing with  
7 her.

8 Q. When is the next time you remember seeing  
9 her after that?

10 A. My next memory of her was when she trained  
11 all the salespeople at the national sales meeting.  
12 That's when all the reps came into town.

13 Q. Is that the Brody Chemical national sales  
14 meeting?

15 A. Yes.

16 Q. And how often is that held?

17 A. Once a year.

18 Q. So when was this meeting?

19 A. It was in the spring of 2005, I believe.

20 Q. Do you remember where that meeting was?

21 A. It was in Salt Lake at a hotel by the  
22 airport.

23 Q. So who attended this meeting?

24 A. All the sales reps flew in from all over.  
25 And then Jon Liddiard was there, all the managers, so



1 that would be Brandy Monserette came in from Denver  
2 and Matt Forsgren. And then there was some office --  
3 Claire Stephenson, Richard Wagner, Collette Jacobson.

4 Q. Who conducted the meeting?

5 A. Jon.

6 Q. Anybody else?

7 A. Matt.

8 Q. Was Tammy Goldthorpe introduced at this  
9 meeting to all the sales representatives?

10 A. Yes, she was.

11 Q. Who introduced her?

12 A. Jon.

13 Q. Was she introduced in connection with the  
14 Slippery Wizard product?

15 A. Yes.

16 Q. Was it your understanding that she was the  
17 owner of the Slippery Wizard product?

18 MR. BRAY: Objection, form, foundation.

19 A. Yes.

20 Q. (BY MR. WINESETT) Was it your  
21 understanding that Brody Chemical would be selling  
22 Tammy Goldthorpe's product?

23 A. Yes.

24 Q. So did you interpret this presentation  
25 regarding Slippery Wizard as a pretty big deal at

1       that time?

2             A.       Yes.

3             Q.       What made you think that?

4             A.       There was a huge need in that industry for  
5       that type of product, and Tammy had a presence in  
6       that industry, was well known; and so this was a good  
7       thing for us to have access to that product.

8             Q.       I'm placing in front of you what has been  
9       previously introduced as Exhibit 5. Do you recognize  
10      this document?

11            A.       Uh-huh (affirmative). It's a black and  
12      white copy of the Asphalt Release Brochure.

13            Q.       Does this product -- does this catalog  
14      include the Slippery Wizard product?

15            A.       Yes.

16            Q.       Did you have any responsibilities with  
17      regard to this product catalog?

18            A.       Yes. I edited it. That's why I could  
19      know what's in it without having to look.

20            Q.       Can you flip through the pages and make  
21      sure it's what you think it is?

22            A.       Yeah. These -- this bottom thing isn't --  
23      I don't remember that being there.

24                   MR. WINESETT: Let the record show she's  
25      referring to the Bates stamp.

1           A.       Have these been reduced? I thought they  
2       were full-size pages.

3                   MR. WINESETT: And she's referring to the  
4       back page of the brochure.

5           Q.       (BY MR. WINESETT) Who gave you the job of  
6       technical editor?

7           A.       Claire Stephenson.

8           Q.       What did that job entail?

9           A.       I was e-mailed all of the electronic  
10       copies of all of the different brochures that were --  
11       they were doing a whole re-marketing of all of their  
12       tech sheets and marketing; and so before they went to  
13       print, I would look at them, correct punctuation,  
14       grammar, any claims that were incorrect or  
15       exaggerated, make it professional.

16          Q.       Did you do that for all the Brody Chemical  
17       brochures at the time?

18          A.       Yes.

19          Q.       Do you remember getting this brochure in  
20       Exhibit 5?

21          A.       Uh-huh (affirmative).

22          Q.       Did you edit that brochure?

23          A.       Yes, I did.

24          Q.       Did you have questions regarding the  
25       Slippery Wizard product in that brochure?

1 A. Yes, one particular paragraph.

2 Q. Who did you ask?

3 A. Tammy.

4 Q. Why did you ask her?

5 A. Because it's her product and she would  
6 know.

7 Q. Was it your understanding that Tammy  
8 Goldthorpe controlled the content of the  
9 advertisement material for Slippery Wizard?

10 MR. WINESETT: I've got no further  
11 questions.

12 EXAMINATION

13 BY MR. BRAY:

14 Q. At any time when you were employed by  
15 Brody did you see any written materials for Brody  
16 Chemical's Slippery Wizard product that referred to  
17 the Slippery Wizard product as Tammy Goldthorpe's  
18 Slippery Wizard product?

19 A. No.

20 Q. From your recollection of editing  
21 Exhibit 5, do you recall seeing any reference to  
22 Tammy Goldthorpe in Exhibit 5?

23 A. No.

24 Q. And if you look at the page that's Bates  
25 numbered Brody 31 on your Exhibit 5, under the

1 picture, can you read how Exhibit 5 describes the  
2 product? Just read out loud the sentence.

3 A. "Brody Chemical's Slippery Wizard asphalt  
4 release is a product specifically developed for the  
5 asphalt industry. It is a blend of natural" --

6 Q. That's fine.

7 MR. BRAY: I have nothing further.

8 **FURTHER EXAMINATION**

9 **BY MR. WINESETT:**

10 Q. Are you aware of any products that Brody  
11 Chemical sells that aren't manufactured by Brody  
12 Chemical?

13 A. Probably over half of what they sell is  
14 not manufactured by Brody Chemical. It's either  
15 private labeled or brought in.

16 Q. And do you know the names of those  
17 manufacturers?

18 A. I know the names of some, but --

19 Q. Can you give me an example?

20 A. Well, we had -- all of their lubricants  
21 and spray aerosols were manufactured by one of four  
22 aerosol manufacturers. Brody Chemical doesn't  
23 manufacture aerosols, so they had to buy it in from  
24 Sprayway or CRC depending upon which aerosol you're  
25 talking about.

1           Q.     Did the Brody Chemical catalogs that you  
2 would edit, did they include the names Sprayway or  
3 CRC in the Brody Chemical catalog?

4           A.     No.   Brody Chemical's marketing strategy  
5 was to lead the client to believe that Brody Chemical  
6 manufactured all of their own products.   So even our  
7 janitorial and laundry line that wasn't Brody's  
8 product said Brody Chemical on the label.

9           Q.     There was a private label for many --  
10 that's for many of the products?

11          A.     Yes.

12                 MR. WINESETT:   Okay.   I have no further  
13 questions.

14                 (Deposition concluded at 3:40 p.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH                                 )  
  ) ss.  
COUNTY OF SALT LAKE                         )

I, Ashley Money, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, NANCY AYERS, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on May 20, 2013, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to Nancy Ayers for the witness to read and sign under the penalty of perjury and then return to me for filing with Nathan Winesett.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 28th day of May, 2013.

\_\_\_\_\_  
Ashley Money, RPR  
Notary Public  
Residing in Salt Lake County

Case: Brody Chemical versus Goldthorpe  
 Opposition No.: 91/204,070  
 Reporter: Ashley Money  
 Date taken: May 20, 2013

**WITNESS CERTIFICATE**

I, **NANCY AYERS**, HEREBY DECLARE:  
 That I am the witness in the foregoing  
 transcript; that I have read the transcript and know  
 the contents thereof; that with these corrections I  
 have noted this transcript truly and accurately  
 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
_____	_____	_____
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_____	_____	_____

\_\_\_\_\_ No corrections were made.

I, **NANCY AYERS**, HEREBY DECLARE UNDER THE  
 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES  
 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE  
 FOREGOING IS TRUE AND CORRECT.

\_\_\_\_\_  
 NANCY AYERS

SUBSCRIBED and SWORN to this \_\_\_\_\_ day  
 of \_\_\_\_\_, 2013, at \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

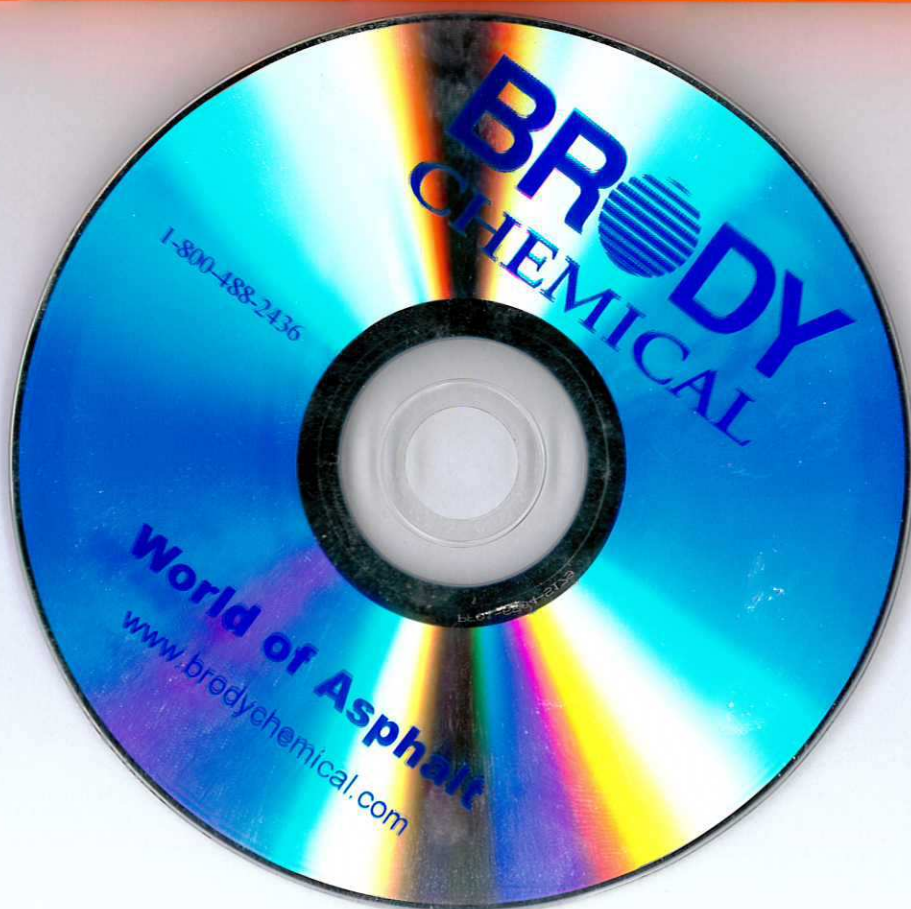


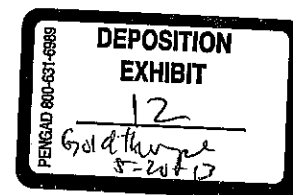
PENGAD 800-631-0980

DEPOSITION  
EXHIBIT

11  
Foreman  
5-20-12

original





**Subject:** Fw:  
**From:** Tammy Price <tamme\_price@yahoo.com>  
**Date:** 1/3/2011 1:11 PM  
**To:** nathan <nathanwinesett@awwlegal.com>

----- Forwarded Message -----

**From:** Tammy Price <tamme\_price@yahoo.com>  
**To:** brody@brodychemical.com  
**Sent:** Mon, January 3, 2011 11:29:17 AM  
**Subject:**

Hi Brody,

I just wanted to quickly follow up with our earlier conversation today. Sometimes I can write things out clearer than I can in conversation.

I got caught a bit off-guard last week with our conversation about my plans, and then I got upset with John's tone when we talked Friday. We have been friends and working together for quite awhile, and I have been very supportive of Brody. I have even allowed Brody to temporarily hold back half of my royalties (dropping from \$1/gal to \$.50/gal) to help out with tough times. Obviously, I know the company has been in a bit of distress, and that people have been leaving, and so forth. The situation has made me a bit insecure about our relationship, as you would expect, because I don't know what is going to happen. I realize now that you and John are also insecure about the situation.

I understand from our last couple talks that you are concerned that I am going to leave and take my Slippery Wizard formula and related marks. In order to alleviate these concerns, and to help get rid of any bad vibes that have popped up lately, I think it would be best if we renegotiate our agreement. If you are interested, I will have my attorney make a license agreement for the formula and Wizard marks. I would be willing to give you an exclusive license for 5 years with automatic 1-year renewals to use the formula and the Wizard marks in Utah, Colorado, Phoenix, and New Mexico. I was thinking that a more sensible pay arrangement would be \$.75/gallon royalty on all Wizard sales.

This would allow Brody to be secure that they will be able to keep selling and me to be secure that Brody will keep paying me for my formula and marks. Kindest Regards, Tammy.

# AVERY, WHIGHAM & WINESETT, P.A.

A FULL SERVICE LAW FIRM



*In the Twin Ports*

## Minnesota Office:

Nathan S. Winesett

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- Admitted in Florida, Minnesota, Utah & Nebraska
- E-mail: [nathanwinesett@awwLegal.com](mailto:nathanwinesett@awwLegal.com)

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Fax: (218) 525-2708

Website: <http://www.awwLegal.com>

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2248 First Street

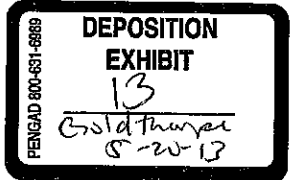
P.O. Drawer 610

Fort Myers, FL 33902-0610

Street Zip Code (33901)

Phone (239) 334-7040

Fax (239) 334-6258



January 11, 2011

VIA E-MAIL ([brody@brodychemical.com](mailto:brody@brodychemical.com))

Brody Liddiard  
BRODY CHEMICAL COMPANY, INC.  
6125 West Double Eagle Circle  
Salt Lake City, Utah 84118

Re: License for SLIPPERY WIZARD  
AWW Docket No.: 40019

Dear Brody:

Please note that we represent Tammy L. Goldthorpe in connection with her intellectual property matters. Tammy has discussed with us the details of her invention of the SLIPPERY WIZARD asphalt release agent product and her current license relationship with Brody Chemical for the use of this trade secret invention, the accompanying mark, and related marks. We understand that Tammy has had a very good relationship with Brody Chemical through past years and that much of this license relationship has not been formally documented.

In the past year, we understand that Brody Chemical experienced some difficult times financially, has been making some cuts, and had some people unexpectedly leave the company. Tammy informs us that she became nervous at one point when Brody Chemical apparently considered that it may stop paying her a royalty of \$1 per gallon of SLIPPERY WIZARD sold. In order to help with the difficult times, Tammy allowed Brody Chemical to temporarily hold back half of her royalties for the SLIPPERY WIZARD product (dropping from \$1/gal to \$.50/gal). Currently, Brody Chemical is paying Tammy \$.50/gal royalties for all SLIPPERY WIZARD and WHITE WIZARD sales. We understand that CLEAR WIZARD sales have been negligible to date.

It appears the relationship between Tammy and Brody Chemical has been strained somewhat due to the circumstances of difficult times, people leaving, and from the absence of a formal agreement. Brody Chemical certainly has some reasonable concerns about the status of its relationship with Tammy and the important SLIPPERY WIZARD product. These concerns have undoubtedly created doubt within the minds of both Tammy and Brody Chemical. Brody Chemical obviously would be

concerned with Tammy leaving and competing against Brody Chemical with the SLIPPERY WIZARD product; and Tammy obviously would be concerned about not getting paid fairly or getting cut out entirely. However, despite this recent unfortunate strain, Tammy is still committed to Brody Chemical's success and an ongoing working relationship.

Accordingly, Tammy has asked us to prepare a formal license agreement for this matter. This Agreement would protect the respective rights of the parties, securing Brody Chemical's current market for the WIZARD products and securing Tammy's interest in the intellectual property and right to payment. As part of this, Tammy is willing to forego any past unpaid royalties through December 31, 2010.

We recommend that you review the attached agreement with your legal advisors. Please contact me with any concerns or questions. If you find the agreement acceptable, please let me know so that we may arrange for execution of the Agreement.

Best regards,

Avery, Whigham & Winesett, P.A.

A handwritten signature in dark ink, appearing to read "Nathan S. Winesett", with a stylized, flowing script.

Nathan S. Winesett

Encl.

**GOLDTHORPE – BRODY CHEMICAL**  
**LICENSE AGREEMENT**

THIS AGREEMENT (“Agreement”) is made on this **1st day of January, 2011**, by and between **Tammy L. Goldthorpe, formerly Tammy Price**, an individual residing at 2750 East 4215 South, Salt Lake City, Utah 84124 (hereinafter referred to as “**Licensor**”), and **Brody Chemical Company, Inc.**, a Utah corporation having a business address of 6125 West Double Eagle Circle, Salt Lake City, Utah 84118 (hereinafter collectively referred to as “**Licensee**”).

**RECITALS**

WHEREAS, Licensor is the inventor and developer of a certain asphalt release agent that is and has been marketed under the SLIPPERY WIZARD mark since at least October 1, 2004 and is the owner of the confidential, trade secret formula and related trade secrets and know-how in connection with said asphalt release agent and any and all improvements thereto (hereinafter the “**Licensed Technology**”);

WHEREAS, Licensor is the owner of the WIZARD family of trademarks for use in connection with asphalt release agents, including the SLIPPERY WIZARD, WHITE WIZARD, and CLEAR WIZARD marks (hereinafter the “**Licensed Marks**”);

WHEREAS, Licensor desires to grant, and Licensee desires to acquire, an exclusive license to make, use, sell, offer to sell, and distribute the SLIPPERY WIZARD asphalt release agent product, under the Licensed Technology and together with the SLIPPERY WIZARD mark, and to use the WHITE WIZARD and CLEAR WIZARD marks in connection with their respective asphalt release agent products in Utah, Colorado, New Mexico, and Arizona (hereinafter the “**Licensed Territory**”) (hereinafter the SLIPPERY WIZARD, WHITE WIZARD, and CLEAR WIZARD products are referred to collectively as the “**Licensed Products**”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. GRANT OF LICENSE.**

**1.1. Exclusive License for SLIPPERY WIZARD product in Licensed Territory.**

Subject to all the terms and conditions of this Agreement, Licensor hereby grants to Licensee a license under the Licensed Technology to manufacture, have manufactured, use, sell, offer to sell, and distribute the SLIPPERY WIZARD asphalt release agent product, together with the SLIPPERY WIZARD mark, in and for the Licensed Territory. Said license shall be exclusive within the Licensed Territory, even as to Licensor. Licensor also hereby grants Licensee an exclusive license to use the SLIPPERY WIZARD mark in the Licensed Territory solely in connection with the production, distribution, sale, and advertisement of the SLIPPERY WIZARD asphalt release agent product. However, Licensor

retains the right to promote or advertise the SLIPPERY WIZARD product in the Licensed Territory. Licensee shall not use, sell, offer to sell, distribute, or promote the SLIPPERY WIZARD product except in conjunction with the SLIPPERY WIZARD mark in a manner approved by Licensor. Licensee shall not use the Licensed Technology other than in conjunction with the SLIPPERY WIZARD product.

- 1.2. **Exclusive License for WHITE WIZARD and CLEAR WIZARD products in Licensed Territory.** Subject to all the terms and conditions of this Agreement, Licensor hereby grants to Licensee an exclusive license to use the WHITE WIZARD and CLEAR WIZARD marks in connection with the production, distribution, sale, and advertisement of the respective WHITE WIZARD and CLEAR WIZARD asphalt release agent products in and for the Licensed Territory. However, Licensor retains the right to promote or advertise the WHITE WIZARD and CLEAR WIZARD products in the Licensed Territory. Unless Licensor provides prior written approval, the WHITE WIZARD and CLEAR WIZARD products shall conform to their current specifications and shall not use the Licensed Technology in their formulations.
- 1.3. **Restriction to Licensed Territory.** The above licenses shall also be restricted to the Licensed Territory, unless prior written approval is granted by Licensor. Any such approval for use, sale, or distribution outside the Licensed Territory shall be of a temporary nature with an at-will term. Unless otherwise agreed to in writing, royalties shall be paid as if the sales were made within the Licensed Territory. The parties agree to cooperate and negotiate reasonably with regard to consumers whose use may overlap the boundaries of the Licensed Territory. *De minimus* overlapping uses by consumers shall not be considered a breach of this Agreement. Licensor shall not grant, license, sell, transfer or give any other persons or entities any rights under the Licensed Technology or the Licensed Marks in connection with the sale of Licensed Products within the Licensed Territory, except for *de minimus* overlaps and cooperatively negotiated overlap issues, and except as otherwise provided for in this Agreement, or pursuant to Licensee's written approval.
- 1.4. **No Assignment or Sublicense.** This Agreement shall be personal to Licensee and shall not be sold, assigned, transferred, or sublicensed by Licensee, in whole or in part, either voluntarily or by operation of law, without the prior written consent of Licensor.

## 2. TERM AND TERMINATION

- 2.1. **Term.** The term of this Agreement shall **commence on January 1, 2011** (hereinafter referred to as the "**Effective Date**") and shall continue in force until **December 31, 2016**. This Agreement shall automatically renew for additional one-year terms unless either party provides written notice to the other party at least six-months prior to the end of the then-current term.

- 2.2. **Default.** If either party commits any material default or breach with respect to any of the provisions of this Agreement, or fails to account for or pay to the other party any payment that becomes due hereunder, then the other party shall have the right to cancel this agreement on 60 days' written notice to the other party if the breaching party fails to cure such breach during the sixty (60) day period.
- 2.3. **Sale of Remaining Inventory upon Early Termination.** Upon termination of this Agreement for any reason, Licensee shall provide Licensor with a written inventory of all Licensed Products in the possession of Licensee, or its sublicensees, or that are in the process of being manufactured. Licensee, and its sublicensees, shall be allowed a period of **one (1) year** to sell off or otherwise dispose of its remaining inventory of Licensed Products, provided that all Royalties are paid for Licensed Products sold or otherwise disposed of to a third party.
- 2.4. **Continuing Obligations After Termination.** Upon termination of this Agreement, whether by default, cancellation, or normal expiration, Licensee shall abide by those sections of this Agreement surviving termination and Licensee shall not be relieved of any duties or obligations to pay all amounts accrued and due hereunder, and said amounts shall be payable at the effective date of the termination.
- 2.5. **Bankruptcy or Cessation of Business by Licensee.** In the event of any adjudication of bankruptcy, appointment of a receiver, assignment for the benefit of creditors, levy of execution directly involving Licensee, or if Licensee becomes insolvent or ceases to carry on its business with respect to the rights granted in this Agreement, then this Agreement shall terminate on 30 days' written notice from Licensor.

### **3. ROYALTY, PAYMENTS, AND REPORTS**

- 3.1. In consideration for the rights conveyed by this Agreement, Licensee shall pay the following Royalties to Licensor:
- 3.1.1. **Royalty – \$0.75 per gallon for SLIPPERY WIZARD.** Licensee shall pay Licensor a royalty of **seventy-five U.S. cents (\$0.75 US)** on each gallon of SLIPPERY WIZARD asphalt release product sold within the Licensed Territory. Licensee shall use its best efforts to promote and sell the SLIPPERY WIZARD asphalt release product in the Licensed Territory.
- 3.1.2. **Royalty – \$0.25 per gallon for CLEAR WIZARD and WHITE WIZARD.** Licensee shall pay Licensor a royalty of **twenty-five U.S. cents (\$0.25 US)** on each gallon of CLEAR WIZARD and WHITE WIZARD asphalt release product sold within the Licensed Territory in connection with the CLEAR WIZARD and WHITE WIZARD marks.
- 3.2. **Quarterly Payments.** The Royalties set forth in this Section shall accrue on the sales made day-to-day in each calendar quarter. On or before the fifteenth day

deduction or withholding shall be made from the payments due under this Agreement unless required by law. Any stamp taxes, registration taxes, turnover taxes, or other taxes, duties or governmental charges incurred due to the execution of this Agreement, or due to the payments made hereunder to Licensor, shall be payable separately by Licensor. However, Licensee will pay any taxes incurred by it due to the manufacture, use, sale, offering for sale, or distribution by Licensee of the Licensed Products.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

- 4.1. **Licensor owns Licensed Technology.** Any and all inventions, trade secrets, know-how, improvements, and confidential information related to the Licensed Technology (collectively referred to as “**Confidential Information**”) shall be owned solely by Licensor, regardless of whether made prior to or during the term of this Agreement and regardless of whether made by Licensor or Licensee. Licensee agrees to cooperate with Licensor with regard to the ownership and protection of the Confidential Information and Licensed Technology. Licensee shall not use the Confidential Information or Licensed Technology except pursuant to this Agreement. Licensee shall return any and all Confidential Information and Licensed Technology and related materials to Licensor upon termination of this Agreement. This section shall survive termination of this Agreement.
- 4.2. **Confidentiality.** Licensee agrees that at all times during the term of this Agreement, any extensions thereof, and after termination of the Agreement, it will hold in trust, keep confidential, and not disclose to any third party or make any use or induce or assist others in the use or disclosure of the Licensed Technology, any improvements thereof, and the Confidential Information. Licensee may disclose the Licensed Technology, improvements, and Confidential Information to its employees, agents, contractors, and advisors who have a need to know such information and who are bound by confidentiality obligations no less protective than those set forth herein, and Licensee may disclose the Licensed Technology to the extent such disclosure is required by law or by the order of a court of competent jurisdiction, provided that the confidentiality is maintained to the fullest extent possible by protective order or otherwise.
- 4.3. **Use of Trademarks.** Licensee agrees to use the Licensed Marks in accordance with Licensor's then-current trademark usage, advertising, and promotion policies. Licensor reserves the right to review and approve or reject any advertising or promotional materials and methods used by Licensee.
- 4.4. **Quality Standards.** Licensee agrees that the nature and quality of: (1) all services and goods rendered by Licensee in connection with the Licensed Marks; (2) all goods produced, distributed or sold by Licensee under the Licensed Marks; and (3) all related advertising, promotional, and other related uses of the Licensed Marks by Licensee shall conform to standards set by, and be under the control of, Licensor. All such uses shall require Licensor's prior and ongoing



consent. Licensee agrees to cooperate with Licensor in facilitating Licensor's control of these quality standards. Licensee shall comply with all applicable laws and regulations and obtain all appropriate governmental approvals pertaining to the production, distribution, sale and advertising of the Licensed Products.

**4.5. Licensor owns Licensed Marks.** Licensee acknowledges the ownership of the Licensed Marks by Licensor, agrees that it will do nothing inconsistent with such ownership, and that all use of the Licensed Marks by Licensee and all good will developed therefrom shall inure to the benefit of and be on behalf of Licensor. Licensee agrees that nothing in this Agreement shall give Licensee any right, title, or interest in the Marks other than the right to use the Licensed Marks in accordance with this Agreement. Licensee agrees to cooperate with Licensor with regard to the ownership and protection of the Licensed Marks. Licensor shall have the sole right, but not the obligation, to take action regarding any alleged infringement of any of the Licensed Marks. Licensee shall assign any registered domain name incorporating any of the Licensed Marks to Licensor. This section shall survive the termination of this Agreement.

**5. INDEMNIFICATION.** Licensee agrees to release, indemnify and hold harmless Licensor, its officers, employees, and agents against any and all losses, expenses, claims, actions, lawsuits, judgments and damages (including attorney's fees through the appellate level) which may be brought against Licensor, its officers, employees, and agents as a result of or arising out of any negligent act or omission of Licensee, its officers, employees, or agents or arising out of the manufacture, use, and sale of the Licensed Products. Licensor makes no warranties with regard to the merchantability of fitness for a particular purpose of the Licensed Technology or the Licensed Products, and hereby disclaims any such warranties. This section shall survive the termination of this Agreement.

**6. GOVERNING LAW.** This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

**7. ATTORNEYS' FEES.** In the event that any party hereto shall be in default or breach of this Agreement, said party shall be liable to pay all reasonable attorneys' fees, court costs, and other related collection costs and expenses incurred by the non-defaulting or non-breaching party in prosecuting its rights hereunder.

**8. BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legatees, agents, representatives, officers, directors, successors and assigns; provided, however, that this Agreement may not be assigned by Licensee nor may Licensee's duties hereunder be delegated, without the prior written consent of Licensor, which consent Licensor shall be entitled to withhold in its sole discretion.

**9. NO JOINT VENTURE.** The parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status or relationship between them and expressly affirm that they have entered into this Agreement as independent contractors and that the same is in all respects as "arms-length" transaction. No party shall be responsible in any way for the debts or obligations of the other party, nor shall either party have the power to obligate or bind the other party in any manner whatsoever.

**10. SEVERABILITY.** The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby. In the event that the legality of any provision of this Agreement is brought into question because of a decision by a Court of competent jurisdiction, the parties agree that either Licensor, by written notice to Licensee, or the Court may narrow the provision in question or delete it entirely so as to comply with the decision of said court.

**11. ENTIRE AGREEMENT FOR LICENSE / NOTICES.** This Agreement expresses and contains the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes and replaces any prior agreements between the parties regarding said subject matter. The parties may amend this Agreement only by written agreement of the parties. Any work as a sales representative or other work performed by Licensor for the benefit of Licensee shall be independent of and negotiated separately from this Agreement. Any notices to be provided under this Agreement shall be made in writing.

**IN WITNESS WHEREOF,** the parties have executed this Agreement and have made it effective as of the day and year first above written.

**Licensor:**

Tammy L. Goldthorpe,  
formerly Tammy Price

**Licensee:**

BRODY CHEMICAL COMPANY, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# AVERY, WHIGHAM & WINESETT, P.A.

A FULL SERVICE LAW FIRM



*In the Twin Ports*

## Minnesota Office:

Nathan S. Winesett

- Registered Patent Attorney
- Admitted in Florida, Minnesota, Utah & Nebraska
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P.O. Box 3277  
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Fax: (218) 525-2708

Website: <http://www.awwLegal.com>

February 4, 2011

VIA E-MAIL ([brody@brodychemical.com](mailto:brody@brodychemical.com))

Brody Liddiard  
BRODY CHEMICAL COMPANY, INC.  
6125 West Double Eagle Circle  
Salt Lake City, Utah 84118

Re: License for SLIPPERY WIZARD  
AWW Docket No.: 40019

Dear Brody:

We are writing to follow up on our January 11, 2011 letter to you, wherein we sent you a proposed license agreement for your company to consider. We have not received a response from you. We have also become aware that your company has been attempting to solicit customers and other business opportunities for the SLIPPERY WIZARD product without our client's approval. We are disappointed in these developments, as we have hoped to come to a mutually beneficial agreement.

As such, we are hereby notifying you that any disclosure, use, or sale of products using our client's trade secret formula or any derivations thereof without our client's consent are a misappropriation of our client's trade secret under Utah law. *See* Utah Code Ann. Title 13 Section 24-1 *et al* (Uniform Trade Secrets Act). Under Utah law, your misappropriation of our client's trade secret will be subject to injunctive relief and damages for our client's actual loss and your unjust enrichment caused by the misappropriation. Furthermore, we believe that your continued misappropriation of our client's trade secret will be considered willful and malicious and subject to punitive damages and attorneys' fees under the statute. Similar laws for misappropriation exist in other states. Accordingly, we demand that you immediately cease any use of our client's trade secret formula or any derivations thereof as well as the sale and distribution of any products using our client's trade secret formula or any derivations thereof.

Additionally, we are also notifying you that any use in commerce of the SLIPPERY WIZARD, WHITE WIZARD, or CLEAR WIZARD marks in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with such use without our



client's consent is an infringement of our client's trademark rights. Injunctive relief, actual damages, punitive damages, and attorneys' fees for such infringement and unfair competition are available to us under Utah and federal law. *See* Utah Code Ann. Title 13 Section 5a-101 *et al* and 15 U.S.C. §§ 1051 *et al*. Accordingly, we demand that you immediately cease any further use of the marks SLIPPERY WIZARD, WHITE WIZARD, and CLEAR WIZARD and related indicia and any other confusingly similar marks.

If you continue to infringe our client's trademarks and use our client's trade secret formula and derivations therefrom, we believe that a court of competent jurisdiction would likely rule in our client's favor and grant us the relief indicated above. We would like to inform you that court precedence establishes that ownership of a trade secret and the establishment of a confidential relationship can be implied from the applicable facts, even without a written contract to that effect. Indeed, the Utah statute itself defines misappropriation to include the "disclosure or use of a trade secret of another without express or implied consent by a person who [...] at the time of disclosure or use, *knew or had reason to know* that his knowledge of the trade secret was [...] acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use[...]" (emphasis added). In the case at hand, it is general knowledge that our client disclosed the formula to you seeking to establish a mutually beneficial license relationship. It is evident from the contract between our client and your company for payment of a \$1/gallon royalty on the company's sales of the product that your company understood it had a duty to pay our client for the use of the trade secret formula and SLIPPERY WIZARD mark. Moreover, your payment of a \$0.50/gallon royalty for the WHITE WIZARD product when it came out establishes that your company understood that it had a duty to pay for use of the WIZARD marks, as our client's trade secret formula is not used in that product. We believe that these and other facts show that there is a clear licensor-licensee relationship for the trade secret and WIZARD marks.

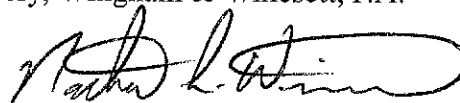
Obviously, your company's actions have caused some concerns for our client regarding the continuance of a trusting business relationship. Nonetheless, our client still believes that there is a possibility to rectify this relationship and is still willing to discuss the same. Our client has proposed a license agreement, but is of course willing to further negotiate the license terms. However, unless and until your company and our client reach an agreement, you may not use or sell products using the trade secret formula or derivations therefrom and you may not use the WIZARD family of marks. If we do not reach an agreement regarding this matter, our client intends to pursue payment of any unpaid royalties and commissions.

Unless we here from you in the next few days, we will presume that your company does not intend to negotiate a new license agreement with our client. Therefore, our client intends to begin seeking other business opportunities for her product.

If you have retained an attorney for this matter, please forward this letter to their attention and have them contact me to discuss this matter.

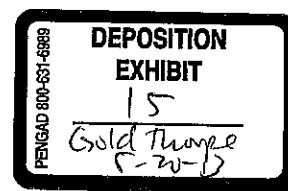
Best regards,

Avery, Whigham & Winesett, P.A.

A handwritten signature in black ink, appearing to read "Nathan S. Winesett", written over a horizontal line.

Nathan S. Winesett

B 112  
TCC



# ASSIGNMENT

WHEREAS, I, **Steve Madsen**, a resident of Utah,  
whose mailing address is 5011 Riverside Drive SLC Utah 84123  
(hereinafter "Assignor"), assisted **Tammy L. Goldthorpe, formerly Tammy Price**, with the  
development and invention of a certain asphalt release formula, formerly known as ASA-12, for  
which the formula, ingredients, and know-how thereof are a trade secret (hereinafter "Trade  
Secret"); and

WHEREAS, **Tammy L. Goldthorpe, formerly Tammy Price**, a resident of **Salt Lake  
City, Utah**, whose mailing address is **2750 East 4215 South, Salt Lake City, Utah 84124**  
(hereinafter "Assignee"), is the inventor of the Trade Secret, having conceived, initiated, and  
developed the key ingredients and novel characteristics of the Trade Secret, and is desirous of  
acquiring the entire right, title, and interest in the same;

NOW, THEREFORE, in consideration of one dollar (\$1.00), the waiver of all monetary  
claims by Assignee against me, and for other good and valuable consideration paid to me by the  
Assignee, the receipt and sufficiency of which is hereby acknowledged, I the said Assignor,  
hereby acknowledge and attest to the foregoing recitals, and hereby grant, transfer, assign, and  
set over unto the said Assignee, my entire right, title and interest in said Trade Secret and in all  
intellectual property rights in connection therewith for the sole use and behoof of the said  
Assignee, its successors, assigns and legal representatives; and the right, power and authority to  
take any action that may be legally exercised with respect to the Trade Secret and to do so in its  
own name, including the right to claim the priority and benefits of any international convention,  
organization, or treaty; and the right to bring actions for infringement or any other right in said  
Trade Secret in its own name, including past infringements or other acts, in any jurisdiction.

I hereby agree, without further consideration and without expense to me, to sign all lawful papers and to perform all other lawful acts which the Assignee may request of me to make this Assignment fully effective, including, by way of example but not of limitation, cooperation to the best of my ability with respect to the Trade Secret and the production of evidence in any actions or proceedings concerning the Trade Secret. I also hereby agree that I have and will continue to hold in trust, safeguard, keep confidential, and not disclose to any third party or make any use or induce or assist others in the use or disclosure of the Trade Secret and the concepts relating thereto; but not including any information that is verifiably documented to previously exist in or to enter the public domain without any wrongdoing by me; and except to the extent such disclosure is required by law or by the order of a court of competent jurisdiction, provided that the confidentiality is maintained to the fullest extent possible by protective order or otherwise.

This assignment and agreement shall be binding upon my heirs and legal representatives.

Executed this 12 day of APRIL, 2011 at 6:00 PM.

  
STEVE MADSEN

Witnessed by:

Signed: 

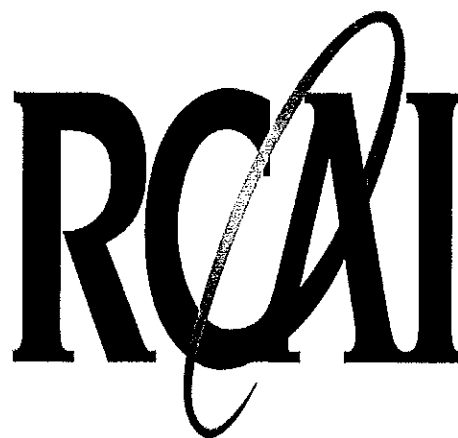
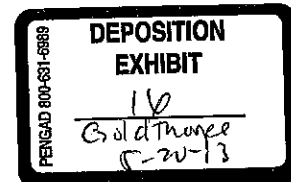
Name: Jeffrey Goldthorpe

Date: April 12, 2011

Signed: 

Name: Tammy Goldthorpe

Date: April 12, 2011



# RECLAMATION CONSULTING AND APPLICATIONS INC.

## *PROPOSAL ASPHALT RELEASE PROGRAM*

**2002**

Submitted By: Tammy Price and Steve Madsen.

RCAI (Reclamation Consulting and Applications, Inc.)

Main Offices: Lake Forest, California. 949-609-0590

Utah Office: Salt Lake City. 801-550-2324 or 801-550-7291

Colorado Office: Denver. 303-660-6001

Research Facility: Lindon, Utah.

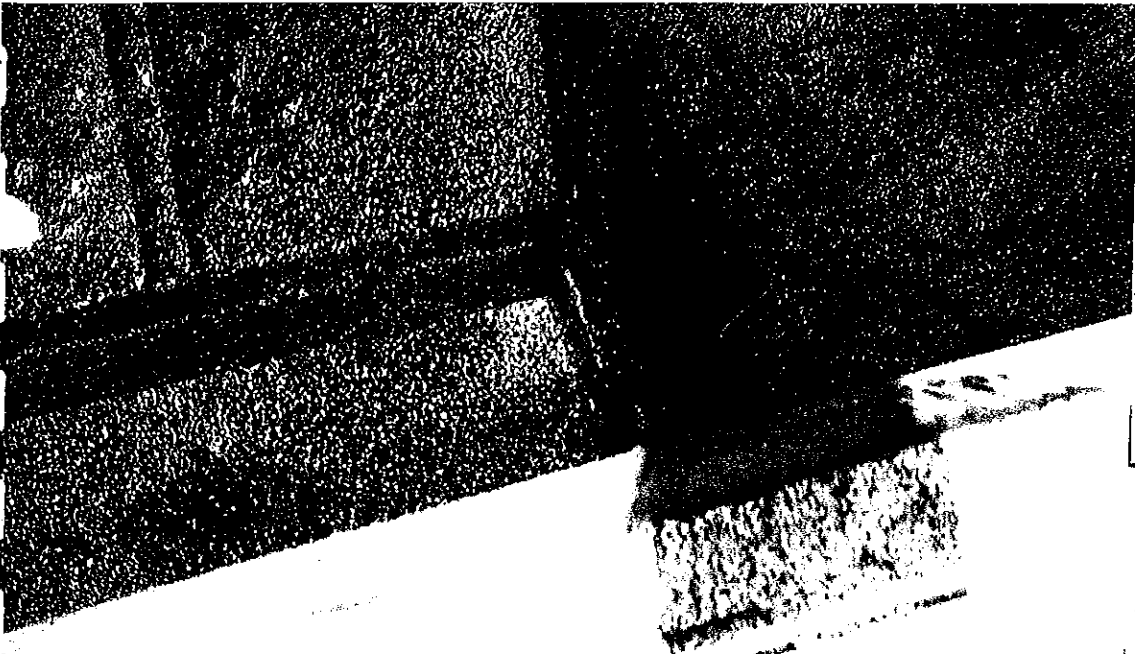
Website: [www.rca-inc.com](http://www.rca-inc.com) NASDAQ Trading Symbol: RCAA

# **Asphalt Release Proposal**

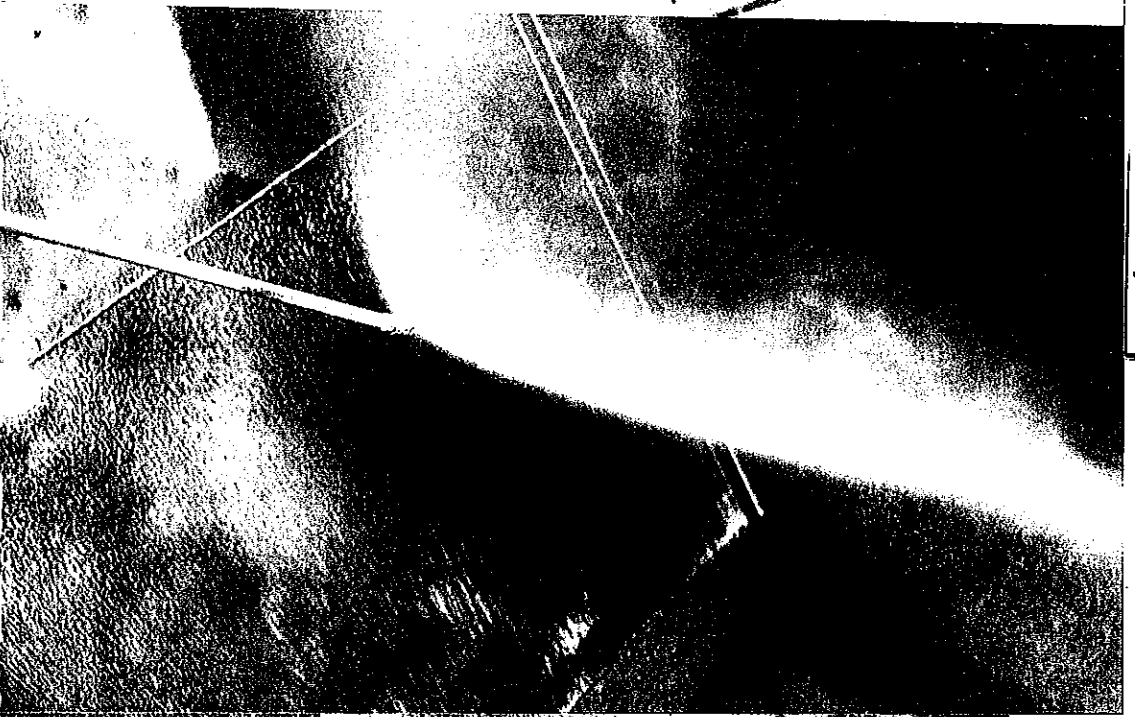
## **Table of Contents**

1. Introduction:
2. Pilot Test Description.
3. Pilot Data and Feedback.
4. Pilot Pictures.
5. Application Options.
6. Basic Pricing.
7. Overall Economics.
8. Summary.






Popcorn  
Asphalt  
with current  
Release  
Product



ASA 12  
Applied to  
Belly Dump  
for use with  
Popcorn  
Asphalt



**ASA 12 Results, after Popcorn released**

## **5. Application Options**

During our driver canvassing we asked what application options would appeal to the driver. The drivers agreed that the first criteria for any application was to have a product that worked. They were willing to do whatever was necessary as far as application if it would keep them from cleaning the truck beds during the day and at the end of the day. We did discuss three basic systems: The Manual Rack, individual sprayers mounted on the truck bed and an automated drive under process.

**The Manual Rack** application would involve placing a tote bin (270 gallons) or barrel (55 gallons) of ASA 12 near the customer's application rack. The tote pump has a wand applicator designed to spray the truck bed from the rack. The pump is electric and will pressurize the material to around 100 psi. The barrel system includes: electric barrel pump and hand applicator.

**Individual Spray Applicators** could be mounted on each truck. The applicators are filled with air and product to allow pressure spraying. The applicator tank would hold 1 – 2 gallons of ASA 12. The tanks can be refilled from a tote bin or barrel placed at the plant.

**Automated Drive Under System** technology is available. From a practical standpoint this system makes the most sense. An automated system will apply the correct amount of ASA 12 to each truck bed and will remove the human factor from the application. The drivers do not have to take the time to go up and down the spray rack or crawl around the truck walls. We heard some concerning stories during our survey. The automated system does not care if it is hot/cold/windy. Therefore, the automated system is more effective, economical and safer than the other options.

## **6. Pricing**

ASA 12 is priced at \$10.00 per gallon. The per truck bed price is approximately \$0.60. ASA 12 is delivered free within 100 miles of Salt Lake City, Utah.

The Manual Rack equipment includes: dual sprayers, electrical pump, and circulating timer on a by-pass line. The equipment is delivered and installed. Electrical service is the responsibility of the plant. The cost of the system is \$1,500. The system cost can be spread out over the course of the first year of ASA 12 use. The equipment is provided at no cost with the purchase of five (5) totes. Installation and set-up is free within 100 miles of Salt Lake City, Utah. Service is free for the first year of operation. Normal service rates are billed at \$50/hour. RCAI guarantees service within 24 hours.

The Individual Spray Applicators include: 1 – 2 gallon tank, 3 feet of hose, spray wand, gun and tip. Compressed air should be available at the plant or on the truck. This system is priced at \$115. Payment options can be discussed with an RCAI representative. One-year warranty.

The Automated Drive Under System includes: Installation, service, monitoring & preventative maintenance. This system is provided free of charge for companies that will use a minimum of 1500 gallons of ASA 12 in 12 months. A diagram of the system is included for your reference.

## 7. Overall Economics

Economics were calculated based on applying ASA 12 to an average of four (4) beds per day.

ASA12 applied at less than one-half pint/ bed would cost \$0.60.  $\$0.60 \times 4 \text{ loads} = \$2.40/\text{day}$ .

### Current Costs:

1. Release Agent cost per truck..... \$ \_\_\_\_\_
2. Chipping/cleaning per truck per day.....\$ \_\_\_\_\_
3. Asphalt degradation/replacement due to release agent.....\$ \_\_\_\_\_
4. Environmental risk of some release agents..... \$ \_\_\_\_\_
5. Driver safety impact (hazardous/non hazardous)..... \$ \_\_\_\_\_

**Current Total Estimated Costs per Truck Bed per day..... \$ \_\_\_\_\_**

**ASA 12 Economics per Truck Bed per day.....\$ 2.40**

**Difference..... \$ \_\_\_\_\_**

**Savings/Bed \$ \_\_\_\_\_ x \_\_\_\_\_ Truck Beds/year = \$ \_\_\_\_\_ Annual Savings.**

## 8. Summary

ASA 12 was developed in response to market demands. ASA 12 has been tested on several different types of asphalt and performed very effectively. ASA 12 has been applied to various pieces of equipment including: truck beds, truck gates, shovels, rakes and other equipment. The results are conclusive.....ASA 12 is the leader in Asphalt Release Technology.

- ☐ 100% Biodegradable.
- ☐ Completely Non Hazardous
- ☐ Easily Applied Manually or Automatically.
- ☐ Manufactured in Utah
- ☐ Free Delivery within 100 miles of Salt Lake City, Utah
- ☐ Equipment service within 24 hours.
- ☐ Zero Negative impact on equipment or asphalt.
- ☐ Heat Stable.
- ☐ Pour Point Stable.
- ☐ Affinity for metal surfaces.
- ☐ Is not a cleaner, this is film technology.

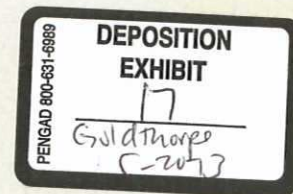
Let your representative know we could be of service to your company.

Thank you for considering RCAI's ASA - 12



## RECLAMATION CONSULTING AND APPLICATIONS INC.

Utah Office: 3558 West 900 South, Salt Lake City, Utah 84104. Phone: 801-977-0695. Fax: 801-977-0696. Email: [smadsen@rca-inc.com](mailto:smadsen@rca-inc.com)  
California Office: 23832 Rockfield Blvd. Suite 275, Lake Forest, CA 92630. Phone: 949-609-0590. Fax: 949-606-0594. [www.rca-inc.com](http://www.rca-inc.com)  
*A Public Company.*



### *Alderox ASA-12 Letter of Introduction*

Alderox ASA-12 is a release product for the asphalt and concrete industries. This compound was developed at the request of the Utah Department of Transportation. ASA-12 is a blend of naturally occurring materials that work in concert to inhibit adhesion of various industrial products to typical surfaces (metal/wood).

### **ASA-12 offers the following:**

- 100% Biodegradable.
- Completely Non Hazardous.
- Easily applied via automation.
- Zero impact to equipment or asphalt.
- Heat Stable.
- Pour point 40 degrees F.
- Affinity for metal surfaces.
- Is not a cleaner, this is a film technology.
- Multiple performances with a single application.
- Available in drums, totes or bulk delivery.
- ***Gunslinger Automated Application System – 2003.***

ASA-12 has been applied to thousands of truck beds in the asphalt industry to reduce or eliminate end of the day "Chipping". The most difficult asphalt mixes are no match for ASA-12. RCAI has challenged the traditional use of diesel with the highly effective and environmentally safe ASA-12.

Please let us know if you would like additional information about RCAI products & services.

**RCAI**  
**3558 West 900 South**  
**Salt Lake City, Utah 84104**

**Phone: 801-977-0695.**  
**Fax: 801-977-0696.**  
**Email: [smadsen@rca-inc.com](mailto:smadsen@rca-inc.com)**



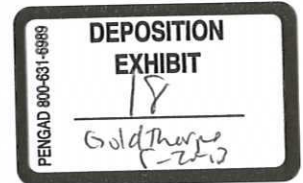


North American Systems, Inc.  
Utah Office  
3558 West 900 South  
Salt Lake City, Utah 84104



(801) 977-0695  
(801) 977-0696 Fax

[www.northamericansystemsinc.com](http://www.northamericansystemsinc.com)



### DRIVERS

#### Alderox ASA-12 Release Agent Instructions

**You are about to experience the most effective release agent on the market today. We are unique in the fact that you do not need to use a lot of our product for it to be effective and yield great results.**

### More is Not Better!!!

**Please use product sparingly. 20 seconds will deliver approximately 1-2 pints of product to the bed of a 16 yard dump truck, in a fine mist of spray. This is a film technology and will adhere to the metal. Avoid applying too thick, which will cause runs or pooling, and wastes product.**

**There is no water in our product so it will not evaporate when the hot asphalt hits it. This product will just keep working. If you do get some build-up, just apply a fine mist of ASA-12 to the build-up, and the build-up will release with the next load!**

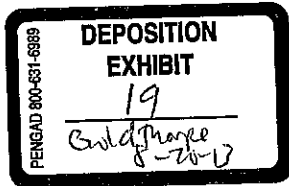
### The Benefits will be Multiple Loads from One Application!

**Properly applied, you should be able to run 3 to 6 loads without re-applying ASA-12, saving you time and energy by eliminating two-thirds of your application time.**

**In order to continue having this product available, we will need to make sure that minimal waste is occurring. Please keep this in mind. Remember, more is NOT BETTER!**

### Application Tips

**ASA-12 works optimally when applied with NASI's GC-1000 Application System. However, for demonstration purposes, a hand-held pneumatic sprayer can be used to provide super results.**



FILED DISTRICT COURT  
Third Judicial District

DEC 28 2001

TAMMY PRICE, PRO SE  
3265 Bitterroot Place  
Taylorsville, Utah 84118  
Telephone: 801 546-6116

ENTERED IN REGISTRY  
OF JUDGMENTS  
DATE 12/31/01

By V. A. Smith  
SALT LAKE COUNTY  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

TAMMY LEE PRICE,  
Petitioner,

vs.

CHARLES BRYAN PRICE,  
Respondent.

DECREE OF DIVORCE  
AND JUDGMENT

Case No. 014906575

Jewis

Petitioner's Complaint for Divorce was submitted to the Court by Affidavit in Support of Decree in lieu of Petitioner's testimony. The Court reviewed the Affidavit in Support of Decree. The Court found that Respondent had previously entered his appearance and consented to the jurisdiction of the Court, accepted service of the Complaint by signing a written admission or waiver of service as permitted by Rule 4(h)(5) of the Utah Rules of Civil Procedure, waived his right to file an Answer or otherwise defend, and consented to the entry of a Decree of Divorce consistent with Petitioner's Complaint. The Court entered Respondent's default.

The Court, having made its Findings of Fact and Conclusions of Law, hereby adjudges, decrees, and orders as follows:

1. The bonds of matrimony and the marriage contract between the parties are



obligations Petitioner is ordered to pay.

23. The parties have incurred certain debts which Respondent is ordered to pay, to wit:

(a) 50% of all marital debts.

24. Respondent shall indemnify and hold Petitioner harmless on all debts and obligations Respondent is ordered to pay.

25. During their marriage the parties acquired an interest in Cigna 401 (k), which interest shall be divided equally between the parties as of the date of the parties' divorce. The parties should cooperate in facilitating the division of such interest by QDRO or such other means as are needed to divide the asset.

26. During their marriage the parties acquired certain real property located at 3265 Bitterroot Place, Taylorsville, UT 84118. Said real estate shall be awarded to Respondent.

27. Each party shall pay his or her own attorney's fees and court costs.

28. Each party is ordered to execute and deliver to the other party without cost any documents necessary to implement the provisions of this Decree of Divorce.

DATED this 28th day of Dec, 2001.

BY THE COURT:

  
DISTRICT COURT JUDGE



CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.  
DATE Jan 31, 2002  
[Signature]  
DEPUTY COURT CLERK





# Texas Department of Transportation

P.O. BOX 6868 • FORT WORTH, TEXAS 76116-0868 • (817) 370-6500

July 2, 2008

CONTACT: Lab

Asphalt Release Agent Testing

Ms. Tamme Price  
Brody Chemical  
6125 West Double Eagle Circle  
Salt Lake City, UT 84118

Dear Ms. Price:

We have tested your product "Slippery Wizard", and found it to be in compliance with our specifications as follows:

## APPROVED – Truck Bodies

Due to past success with currently approved products in our Test Method TEX-239-F, Part IV, Field Test, we are foregoing the final requirement to perform this test with your product at this time due to inconsistent hot mix usage by TxDOT forces. We retain the right to perform this test at a later date.

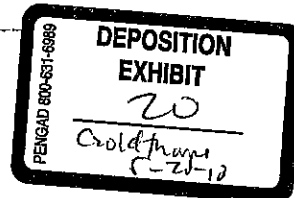
I will be sending out a memo to our Austin office this week to have your product added to the statewide list. Please use this letter as confirmation of this product's approval.

If you have any questions, please call me at (817) 370-6675 or email at [rwillia@dot.state.tx.us](mailto:rwillia@dot.state.tx.us).

Sincerely,

*Richard A. Williamson*, P.E.  
Fort Worth District Materials Engineer

RSW: rsw





Construction Materials

Tammy Price  
Reclamation Consulting and Applications Inc.  
3558 West 900 South  
Salt Lake City, Utah 84104

Dear Tammy,

**Subject: ASA-12 Release Agent**

This letter is in regard to the demonstration and performance of the ASA-12 release agent. In September 2002 a team from RCAI provided a demonstration of the ASA-12 product at two of our plant sites. The team was courteous and fielded all the questions our operations staff had as well as assisting our truckers in application of the product. The product was used on bottom dump trailers on two fast paced Colorado Department of Transportation projects. The ASA-12 was tested on two asphalt concrete mixes. One mix utilized a PG 64-22 binder, and the other modified asphalt, PG 64-28. The product performed exceptional on both mixes. The truckers were particularly pleased with its performance. I was informed that the product even removed old asphalt that had accumulated in the corners of the truck beds. In summary, the product performed quite well and the professionalism and courtesy of RCAI team was appreciated.

John Pinello  
Highway Paving Manager  
Lafarge West Inc.

